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Universal Periodic Review: A Step in the Right Direction?

A thesis submitted to Middlesex University in partial fulfilment of the requirements
for the degree of Doctor of Philosophy

Christina Szurlej

School of Law

Middlesex University

July 2013

Abstract

Universal Periodic Review: A Step in the Right Direction?

After replacing the Commission on Human Rights, the Human Rights Council established Universal Periodic Review, a new mechanism for periodically reviewing the human rights record of every United Nations Member State.¹ As the only mechanism of its kind, it is imperative to assess and evaluate the efficacy and efficiency of the review process to identify strengths and weaknesses. Whilst Universal Periodic Review marks a significant improvement in human rights monitoring, it is a new process that necessitates a pragmatic approach towards continual improvement stemming from an examination of best practices and challenges in the context of the principles and objectives of the review to enhance its intended outcomes. This study explores how Universal Periodic Review has changed the landscape of human rights monitoring through an examination of the review's normative framework; the indivisibility and interrelatedness of human rights in the context of Universal Periodic Review; strategies to enhance the role of relevant stakeholders; the quality of voluntary commitments, recommendations and State responses; and, implementation and follow-up. Data collected from monitoring, documenting and analysing the Universal Periodic Review process during its first cycle will help identify strengths and challenges and contribute towards improving the effectiveness of the United Nations' system for reviewing each United Nations Member State's human rights record in future cycles. Although Universal Periodic Review has already produced significant results, much progress is yet to be achieved. Recommendations are provided to solidify best practices and address key challenges in preparation for future cycles of review.

¹ General Assembly, 'Establishing the Human Rights Council and the Universal Periodic Review,' 15 March 2006, A/RES/60/251.

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Christina Szurlej

Middlesex University

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Acronyms

APRM	African Peer Review Mechanism
CHR	Commission on Human Rights
CAT	International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW	International Convention on the Elimination of All Forms of Discrimination against Women
CERD	International Convention on the Elimination of All Forms of Racial Discrimination
CESCR	International Covenant on Economic, Social and Cultural Rights
CRPD	International Convention on the Rights of Persons with Disabilities
CRC	International Convention on the Rights of the Child
CRMW	International Covenant on the Protection of the Rights of All Migrant Workers and Members of Their Families
ECOSOC	Economic and Social Council
EEG	Eastern European Group
GRULAC	Group of Latin American and Caribbean Countries
HRC	Human Rights Council
ICCPR	International Covenant on Civil and Political Rights
IGO	Intergovernmental Organisation
NGO	Non-governmental organisation
NHRI	National Human Rights Institution
OHCHR	Office of the United Nations High Commissioner for Human Rights
OP-CAT	Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
UN	United Nations
UNGA	United Nations General Assembly
UDHR	Universal Declaration of Human Rights

UNDP	United Nations Development Programme
UPR	Universal Periodic Review
WEOG	Western European and Other Group

Chapter 1

Introduction

Universal Periodic Review is a budding mechanism established by the Human Rights Council, successor of the Commission on Human Rights, to review periodically the records of United Nations Member States according to the Charter of the United Nations, Universal Declaration of Human Rights, human rights treaties to which the State concerned is a party, applicable international humanitarian law and voluntary commitments or pledges.² The review process is guided by a set of principles and objectives found in Human Rights Council resolution 5/1. Member and Observer States hold States under review accountable under applicable international human rights standards by posing recommendations during a peer-led interactive dialogue based on reports submitted by the State concerned, as well as a summary of stakeholder reports and compilation of United Nations documentation prepared by the Office of the High Commissioner for Human Rights. States under review also have the opportunity to make voluntary commitments to improve their own human rights records. It is during the implementation phase of Universal Periodic Review that the outcome of the interactive dialogue is realised with a view to improving the human rights situation in the State concerned.

As it is the only universal, periodic mechanism for reviewing the human rights record of every United Nations Member State, it is imperative to assess and evaluate the efficacy and efficiency of the review process to identify strengths and weaknesses. This thesis seeks to address whether measuring the principles and objectives against the outcome of Universal Periodic Review reveals that the review meets its intended purpose. Based on lessons learned during the first cycle, how can the review process be improved to achieve better results?

Several challenges have emerged during the first cycle of Universal Periodic Review that must be addressed and overcome in order for the review process to better achieve

² General Assembly, 'Establishing the Human Rights Council and the Universal Periodic Review,' 15 March 2006, A/RES/60/251.

its intended objective of improving ‘the human rights situation at the ground level.’³

Some of the challenges that will be discussed centre on:

- a. maintaining universal participation among Member States;
- b. encouraging States to move beyond the minimum action necessary to achieve the appearance of cooperation with the process;
- c. ensuring the international community assists least developed States with participating in the review and implementing obligations;
- d. improving the quality of recommendations to ensure they are concrete, realistic and action-oriented;
- e. streamlining and clustering recommendations to make the process less burdensome;
- f. enhancing involvement of stakeholders and human rights experts throughout the process; and,
- g. developing a methodical system for measuring levels of implementation and systematically following-up on outstanding commitments.

Although not without fault, Universal Periodic Review marks a significant step towards realising human rights standards at the ground level in States under review. Whilst States under review have the discretion to accept or reject recommendations, most States have accepted the majority of recommendations they have received, which is an early measure of the success of Universal Periodic Review. Another indication of success is the significant number of States that have submitted mid-term implementation reports or have otherwise demonstrated evidence of implementing accepted recommendations and voluntary commitments, partially or in full, since the first cycle of review. Concerned States have also shared best practices emerging from the review process, which will serve to strengthen the scope and reach of outcomes.

The following introduction explains the transition from the Commission on Human Rights to the Human Rights Council, detailing the creation of Universal Periodic Review, the work and functioning of the review, and preliminary observations. The introduction further summaries the chapters contained in Part I: An Overview of Universal Periodic Review and Part II: An Evaluation of the Universal Periodic

³ Human Rights Council, ‘Institution-building of the United Nations Human Rights Council,’ 18 June 2006, A/HRC/5/1, p. 3, para. 4.

Review Process; the selection of literature and other sources consulted; and methodology employed.

1.1 The Commission on Human Rights: Predecessor to the Human Rights Council

Under article 68 of the Charter of the United Nations, the Economic and Social Council was tasked with establishing ‘commissions in the economic and social fields and for the promotion of human rights.’⁴ Established by the Economic and Social Council in 1946, the Commission on Human Rights held its first meeting on 27 January 1947.⁵ Over six decades later, the Commission held its 62nd and final session on 27 March 2006⁶ less than a week after ‘the Economic and Social Council (ECOSOC) voted to dissolve the Commission.’⁷

The Economic and Social Council established a periodic reporting mechanism similar to Universal Periodic Review in 1956, requiring States to ‘transmit to the Secretary-General, every three years, a report describing developments and the progress achieved [on implementing standards of the Universal Declaration of Human Rights] during the preceding three years.’⁸ On 17 December 1980, the General Assembly abolished the earlier mechanism after international human rights treaties had been negotiated and the treaty body system began to emerge.⁹

There are some primary differences between the earlier reporting mechanism and Universal Periodic Review. When tasking the Human Rights Council with establishing a Universal Periodic Review sixty years later, the General Assembly stipulated that the review is to ‘complement and not duplicate the work of the treaty

⁴ *Charter of the United Nations* (adopted 26 June 1945, entered into force 24 October 1945).

⁵ Commission on Human Rights, First Session, ‘Summary Record of the First Meeting,’ Lake Success, New York, 27 January 1947, E/CN.4/SR.1.

⁶ United Nations Documentation: Research Guide, ‘Commission on Human Rights (1946-2006),’ available at: <http://www.un.org/depts/dhl/resguide/spechr.htm#commission>

⁷ Economic and Social Council, ‘Procedural Resolution on the Closure of the Work of the Commission,’ 22 March 2006, ECOSOC/2006/2; Kevin Boyle, ‘The United Nations Human Rights Council: Origins, Antecedents, and Prospects,’ in Kevin Boyle, (ed) *New Institutions for Human Rights Protection* (Oxford, Oxford University Press 2009).

⁸ Economic and Social Council, ‘Periodic Reports on Human Rights and Studies of Specific Rights or Groups of Rights,’ 1 August 1956, E/RES/624 B (XXII), para. 1.

⁹ General Assembly, ‘Identification of Activities that Have Been Complete or Are Obsolete, of Marginal Usefulness or Ineffective,’ A/RES/35/209, 17 December 1980.

bodies,¹⁰ addressing the principal reason for why the earlier mechanism was abolished. In addition, unlike the original mechanism, Universal Periodic Review has a broader scope and hinges on peer-review. Another difference is that the earlier mechanism was based solely on reports prepared by the State concerned, whereas Universal Periodic Review is supplemented by reports containing a compilation of United Nations documentation and a summary of stakeholder reports prepared by the Office of the High Commissioner for Human Rights. The key question is whether these differences are significant enough to mitigate the risk that Universal Periodic Review will become superfluous, as the earlier mechanism had.

Although the Commission took on an advisory and standard-setting role during its first 21 years, from 1967 onwards, the Commission began to investigate human rights violations and produce reports. During the first two decades of its operation, the Commission refused to hear individual human rights complaints, but new additions to the Commission from developing and newly independent States pressed for a mandate to ‘publicly debate situations of large-scale human rights violations.’¹¹ Three years later, the Economic and Social Council extended the power of the Commission to establish ‘a procedure for dealing with communications relating to violations of human rights and fundamental freedoms’¹² The Commission also created geographic mandates by country and thematic mandates,¹³ comprised of 30 special procedures at the time of its dissolution.¹⁴ Empowered to establish its own subsidiary bodies, the Commission created the Sub-Commission on the Prevention of Discrimination and Protection of Minorities, which later became the Sub-Commission on the Promotion

¹⁰ General Assembly, ‘The Human Rights Council,’ A/RES/60/251, 3 April 2006, p. 3, para. 5(e).

¹¹ *Ibid*, p. 25; Economic and Social Council, ‘Question of the Violation of Human Rights and Fundamental Freedoms, including Policies of Racial Discrimination and Segregation and of Apartheid, in All Countries, with Particular Reference to Colonial and Other Dependant Countries and Territories,’ 6 June 1967, ESCOSOC/1235(XLII).

¹² Economic and Social Council, ‘Establishing a Procedure for Dealing with Communications relating to Violations of Human Rights and Fundamental Freedoms,’ ECOSOC/1503(XLVIII), 27 May 1970, later revised by Economic and Social Council, ‘Procedure for Dealing with Communications Concerning Human Rights,’ 9 June 2000, ECOSOC/2003/3; See also Commission on Human Rights, ‘Report of the Working Group on Enhancing the Effectiveness of the Mechanism of the Commission on Human Rights,’ 16 February 2000, E/CN.4/2000/112.

¹³ Kamminga, Menno T. ‘The Thematic Procedures of the UN Commission on Human Rights,’ (1987) *Netherlands International Law Review*, pp. 299-300.

¹⁴ Marc J. Bossuyt, ‘The Development of Special Procedures of the United Nations Commission on Human Rights,’ (1985) 6 *Human Rights Law Journal* 2-4; Helena Cook, ‘International Human Rights Mechanisms: The Role of Special Procedure in the Protection of Human Rights,’ (1993) 50 *International Commission of Jurists Review*.

and Protection of Human Rights,¹⁵ and the Sub-Commission on the Freedom of Information and of the Press. The Sub-Commission on the Status of Women was originally intended to be a subsidiary body of the Commission, but instead became a subsidiary body of the Economic and Social Council and was renamed the Commission on the Status of Women.¹⁶ The Commission also had three working groups on special procedures regarding arbitrary detention, enforced or involuntary disappearances and self-determination.

Many academics have been quick to criticise the Commission, but ‘the achievements of the United Nations Commission on Human Rights often have been underestimated.’¹⁷ The Commission made a significant contribution towards laying the foundation of international human rights law by drafting the Universal Declaration of Human Rights, International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights and its Optional Protocol, and five Conventions.¹⁸ Another lasting achievement of the Commission is that it provided ‘an annual forum for the active participation and dialogue between States, NGOs and independent experts on human rights’ over the six consecutive weeks during which the Commission met annually.¹⁹ The late Professor Kevin Boyle further observed that:

Throughout its history member states have proved extraordinarily effective at negotiating, drafting, and agreeing norms on human rights and freedoms. The former Commission on Human Rights played a central role in these achievements. It is equally impressive to note how these diplomatic achievements have been embraced by states through the ratification of

¹⁵ Asbjørne Eide ‘The Sub-Commission on Prevention of Discrimination and Protection of Minorities,’ in Philip Alston (ed) *The United Nations: A Critical Appraisal* (Clarendon Press, Oxford 1992).

¹⁶ Laura Reanda, ‘The Commission on the Status of Women’ in Philip Alston (ed) *The United Nations: A Critical Appraisal* (Clarendon Press, Oxford 1992).

¹⁷ Manfred Nowak, ‘It’s Time for a World Court of Human Rights,’ in M. Cherif Bassiouni and William A. Schabas (eds.) *New Challenges for the UN Human Rights Machinery: What Future for the UN Treaty Body System and the Human Rights Council Procedures?* (Intersentia, Cambridge 2011), p. 18.

¹⁸ Constance de la Vega and Tamara N. Lewis, ‘Peer Review in the Mix: How the UPR Transforms Human Rights Disclosure,’ in M. Cherif Bassiouni and William A. Schabas, *New Challenges for the UN Human Rights Machinery* (Intersentia, Cambridge 2011), p. 355.

¹⁹ *Ibid*, p. 19.

multilateral treaties that have given us the substantial corpus of international human rights law.²⁰

If the Commission on Human Rights boasted these achievements, why did the General Assembly replace it with the Human Rights Council? Over time, the Commission fell into disrepute for being overly politicised by focusing on violations in certain countries and was accused of selectively overlooking violations in other States for political reasons.²¹ Acknowledging the inherently political character of the Commission stunts this argument: how can politicisation and selectivity be removed from the equation when the primary actors represent the interests of sovereign States? The Commission was comprised of representatives of sovereign States, guided by political interests, as is the case with the General Assembly, the Security Council and other Charter-based mechanisms. In some cases, politicisation proved to enhance the promotion of human rights by the Commission. Political interests led the Non-Allied Movement members to spearhead efforts to address racism in the 1960s, and an increase in the membership of the Africa and Asia groups tipped the scale towards expanding the mandate of the Commission in 1967 and 1970.

As aptly noted by Nadia Bernaz, United Nations mechanisms for the protection of human rights

can hardly be viewed outside a very politicized context: the choice of a voting system, geographical representation, the seemingly arbitrary decision to establish one special procedure while discontinuing another... in other words most issues related to the UN human rights protection procedures carry with them the overwhelming weight of politics.²²

²⁰ Kevin Boyle, 'The United Nations Human Rights Council: Origins, Antecedents, and Prospects,' in Kevin Boyle, (ed) *New Institutions for Human Rights Protection* (Oxford, Oxford University Press 2009), p. 15.

²¹ Nowak, Manfred, 'The New Trend towards Re-Politicising Human Rights,' in M. Castermans-Holleman, F. van Hoof and J. Smith (eds) *The Role of the Nation-State in the 21st Century: Human Rights, International Organisations and Foreign Policy. Essays in Honour of Peter Baehr* (Kluwer Law International 1998); Elvira Dominguez Redondo, 'The Universal Periodic Review of the United Nations Human Rights Council: An Assessment of the First Session,' (2008) 7 *Chinese Journal of International Law* 3, p. 8; Howard Tolly, *The U.N. Commission on Human Rights* (Boulder, Westview Press 1987); Oberleitner, Gerd, *Global Human Rights Institutions* (Polity, Cambridge 2008), pp. 44-45.

²² Nadia Bernaz, 'Reforming the UN Human Rights Protection Procedures: A Legal Perspective on the Establishment of the Universal Periodic Review Mechanism,' in Kevin Boyle, (ed) *New Institutions for Human Rights Protection* (Oxford, Oxford University Press 2009), p. 81.

Perhaps most concerning were countries that were omitted from scrutiny due to membership on the Commission. The election of Sudan in 2004 following and during the human rights crisis in Darfur, gave rise to such concerns, but these situations could be remedied by implementing stricter standards for membership.²³ As such, accusations of politicisation were closely linked with criticisms regarding membership of the Commission. Initially comprised of 18 members, the Commission had 53 members at the time of its dissolution, the majority of which represented the developing world, as membership allotments were based on region. The Africa and Asia groups held the highest number of seats, with 15 and 12 respectively. The Latin America and Caribbean group had 11 seats, the Western and others group had 10, and the Eastern Europe group held 5 seats. 'The voting arrangements ensured that a 'slate' proposed by the group for its allocated seats would be approved without vote and that the convention in ECOSOC was not to challenge a member put forward by any regional group.'²⁴ The Commission was criticised for allowing the membership of countries known to be persistent violators of human rights standards that sought membership to evade criticism.

Other scholars argued the Commission was inundated with responsibilities, faced limited resources and did not have an adequate time allocation. In support of this argument, Gerd Oberleitner contended:

The Commission's agenda was overwhelming in relation to the time allocated, and in retrospect the idea that a 53-member body with meagre support from the UN secretariat was supposed to discuss, decide and act upon all human rights violations worldwide in only thirty working days, let alone draft new standards and discuss thematic issues, seems somewhat preposterous.²⁵

Arguments against selectivity and politicisation, coupled with the realisation that the Commission was not adequately equipped to manage the changing landscape of international human rights protection, were evidence of the need for a new United Nations human rights mechanism to replace the Commission on Human Rights.

²³ Henderson, Tiffany, 'Towards Implementation: An Analysis of the Universal Periodic Review Mechanism of the Human Rights Council,' June 2008, p. 4.

²⁴ Kevin Boyle, 'The United Nations Human Rights Council: Origins, Antecedents, and Prospects,' in Kevin Boyle, (ed) *New Institutions for Human Rights Protection* (Oxford, Oxford University Press 2009), p. 27.

²⁵ Gerd Oberleitner, *Global Human Rights Institutions* (Polity, Cambridge 2008), p. 43.

United Nations Secretary-General Kofi Annan elaborated on this in his report 'In Larger Freedom,'²⁶ stating that:

...the Commission's capacity to perform its tasks has been increasingly undermined by its declining credibility and professionalism. In particular, States have sought membership of the Commission not to strengthen human rights but to protect themselves against criticism or to criticize others. As a result, a credibility deficit has developed, which casts a shadow on the reputation of the United Nations system as a whole.²⁷

Whilst a major review of the Commission in 2000 did not prevent its dissolution in 2006, it laid the foundation for the procedures inherited by the Human Rights Council. It was clear that the former Commission on Human Rights had 'outgrown itself' and a new mechanism should be introduced to take its place.²⁸

1.2 Proposals for Creating the Human Rights Council

In 2003, the Swiss Ministry of Foreign Affairs released a study to identify ways to reform the Commission on Human Rights, which *inter alia*, recommended replacing the Commission with a Human Rights Council.²⁹ Professor Walter Kälin explored the prospect of a Council further in his report 'Towards a Human Rights Council: Options and Perspectives,' which was brought before the High Level Panel on Threats, Challenges and Change tasked with providing an assessment of threats to international security and determining how to strengthen United Nations institutions' strategies to address such threats. In its report, the High Level Panel supported the creation of the Human Rights Council to replace the Commission and assume responsibility over a universal periodic review mechanism.³⁰ These studies set the stage for United Nations

²⁶ General Assembly, 'In Larger Freedom: Towards Development Security and Human Rights for All: Report of the Secretary-General,' 21 May 2005, A/59/2005.

²⁷ *Ibid.*, p. 45, para. 182. See also Oliver de Frouville, 'Building a Universal System for the Protection of Human Rights: The Way Forward,' in M. Cherif Bassiouni and William A. Schabas, *New Challenges for the UN Human Rights Machinery* (Intersentia, Cambridge 2011), p. 241 and Felice D. Gaer, 'A Voice Not an Echo: Universal Periodic Review and the United Nations Treaty Body System,' (2007) 7 *Human Rights Law Review* 1, p. 109.

²⁸ Nazila Ghanea, 'From UN Commission on Human Rights to UN Human Rights Council: One Step Forward or Two Steps Sideways?' (2006) 55 *International and Comparative Quarterly* 695.

²⁹ Walter Kälin, *Reform of the UN Commission on Human Rights, Study Commissioned by the Swiss Ministry of Foreign Affairs* (Institute of Public Law, Geneva 2003).

³⁰ Walter Kälin, 'Towards a Human Rights Council: Options and Perspectives,' August 2004; United Nations, 'A More Secured World: Our Shared Responsibility,' Report of the Secretary-General's High-level Panel on Threats, Challenges and Change, New York, 2004; Paul Gordon Lauren, 'To Preserve and Build on its Achievements and to Redress its Shortcomings': The Journey from the Commission on Human Rights Council,' (2007) 29 *Human Rights Quarterly* 307, p. 308.

Secretary General Kofi Annan to propose the creation of a Human Rights Council in May 2005.³¹

In an addendum³² to his report ‘In Larger Freedom, the Secretary-General embraced the concept of a Human Rights Council³³ to take responsibility for developing a ‘peer review’ process to assess the realisation of each State’s human rights obligations. The Secretary General explained that the ‘chamber of peer review’ would be tasked with evaluating each State’s fulfilment of its human rights obligations and would complement, but not duplicate, the human rights treaty body reporting procedures.³⁴ According to the Secretary-General, ‘peer review would be a process whereby States voluntarily enter into discussion regarding human rights issues in their respective countries, and would be based on the obligations and responsibilities to promote and protect those rights arising under the Charter and as given expression in the Universal Declaration of Human Rights.’³⁵

The 2005 World Summit Outcome document reaffirmed the United Nations’ commitment to strengthen human rights by creating a Human Rights Council responsible for ‘promoting universal respect for the protection of all human rights and fundamental freedoms for all, without distinction of any kind and in a fair and equal manner.’³⁶ It was decided that the Council should likewise address human rights violations and coordinate human rights within the United Nations system.³⁷ As President of the United Nations, Secretary-General Kofi Annan conducted ‘open, transparent and inclusive negotiations’ to establish the ‘mandate, modalities,

³¹ General Assembly, ‘2005 World Summit Outcome,’ 24 October 2005, A/Res/60/1, p. 33, para. 157. ‘Pursuant to our commitment to further strengthen the United Nations human rights machinery, we resolve to create a Human Rights Council.’

³² General Assembly, ‘In Larger Freedom: Towards Development Security and Human Rights for All, Addendum: Human Rights Council: Explanatory Note by the Secretary-General,’ 23 May 2005, A/59/2005/Add.1, p. 2, para. 6. ‘The Secretary-General further elaborated on a proposed new key peer review function for the Human Rights Council in a speech to the Commission on Human Rights on 7 April 2005,’ p. 44, para. 175.

³³ General Assembly, ‘In Larger Freedom: Towards Development Security and Human Rights for All: Report of the Secretary-General,’ 21 May 2005, A/59/2005, pp. 45-46, paras. 181-183.

³⁴ General Assembly, ‘In Larger Freedom: Towards Development Security and Human Rights for All, Addendum: Human Rights Council: Explanatory Note by the Secretary-General,’ 23 May 2005, A/59/2005/Add.1, p. 3, para. 7.

³⁵ *Ibid.*

³⁶ *Ibid.*, p. 33, para.158.

³⁷ *Ibid.*, p. 33, para.159.

functions, size, composition, membership, working methods and procedures of the Council.’³⁸

It was envisioned that a peer review mechanism would eliminate politicisation by creating a universal process where each State is held to account for the full spectrum of human rights; as such, each State is ‘reviewed against the same criteria.’³⁹ Several details proposed at this stage became a part of the modalities and practices of Universal Periodic Review, including that the General Assembly must reach agreement on the quality and quantity of information presented as the basis for review and that the Office of the High Commissioner for Human Rights would assume a key role in compiling this information. The process could provide ‘technical assistance and policy advice,’ and hold ‘members accountable for their human rights commitments,’ thus expanding the scope of powers previously held by the Commission on Human Rights.⁴⁰

1.3 The Human Rights Council Creates Universal Periodic Review

The Human Rights Council formally replaced the Commission on 15 March 2006 upon the adoption of General Assembly resolution 60/251, with 170 votes in favour. Only Israel, the United States of America, Palau and the Marshall Islands voted against the establishment of the Human Rights Council, whilst Byelorussia, Iran and Venezuela abstained.⁴¹ Resolution 60/251 set the foundation for distinguishing the Council from the Commission to restore the legitimacy of the leading human rights mechanism of the United Nations.

Key differences between the former Commission on Human Rights and the Human Rights Council centre on status, election of members, length of time in session annually and, of course, the Universal Periodic Review mechanism entrusted to the Council.⁴² Despite having served as the primary international body responsible for

³⁸ *Ibid.*, para. 160. See also Yvonne Terlingen, ‘The Human Rights Council: A New Era in UN Human Rights Work,’ (2007) 21 *Ethics and International Affairs* 167, p. 167.

³⁹ *Ibid.*, p. 3, para.8. Whilst States under review are held accountable under the same criteria (i.e. *the Charter of the United Nations, Universal Declaration of Human Rights*, international human rights law and applicable international humanitarian law), States may have different obligations depending on the human rights treaties they have ratified and voluntary commitments they have made.

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

⁴² Oberleitner, Gerd, *Global Human Rights Institutions* (Polity, Cambridge 2008), p. 65.

promoting and protecting human rights, the Commission was a subsidiary body of and reported to the Economic and Social Council, unlike the Human Rights Council, which reports directly to the General Assembly. The elevated status of the Human Rights Council over the Commission on Human Rights is an early indication of stronger international commitment towards protecting and promoting human rights.⁴³ Members of the Commission on Human Rights were not subject to extensive scrutiny of their human rights records or commitments, unlike members of the Human Rights Council. Electing members according to their commitment towards human rights did much to eliminate the argument of members being elected to avoid criticism whilst selectively criticising other States. Another key difference between the Commission and the Council rests on the length of time devoted to annual meetings. Whereas the Commission on Human Rights only met for six consecutive weeks each year, the Human Rights Council meets for ten weeks annually over three separate sessions and can hold additional special sessions.⁴⁴

Resolution 60/251 assigned the Human Rights Council with responsibility over reviewing the human rights record of all United Nations Member States via a Universal Periodic Review mechanism.⁴⁵ Following the creation of the Human Rights Council, some States expressed concern that the Council would further perpetuate the mistakes of the Commission on Human Rights. States questioned whether the need for expedient reform outweighed the Council's lack of a clear mandate, structure and function when it was created.⁴⁶ Although there is much debate over whether the creation of Human Rights Council fully addressed concerns arising from the selectivity and politicisation of the Commission on Human Rights, there is little doubt that the creation of the Universal Periodic Review brings human rights to the forefront of international discussion. According to Professor Edward McMahon, member of the Advisory Board for UPR-Info:

⁴³ Kevin Boyle, 'The United Nations Human Rights Council: Origins, Antecedents, and Prospects,' in Kevin Boyle, (ed) *New Institutions for Human Rights Protection* (Oxford, Oxford University Press 2009), pp. 12-14.

⁴⁴ *Ibid.*

⁴⁵ General Assembly, 'Establishing the Human Rights Council and the Universal Periodic Review,' 15 March 2006, A/RES/60/251.

⁴⁶ Bassiouni, M. Cherif, 'A Critical Introduction Assessment of the UN Human Rights Mechanisms,' in M. Cherif Bassiouni and William A. Schabas, *New Challenges for the UN Human Rights Machinery* (Intersentia, Cambridge 2011).

While the CHR had instituted a formal process of states issuing reports on their adherence to human rights standards and practices, the UPR reflect[s] a potentially significant step forward in that it is designed to utilise peer review—and its heightened profile and attendant public exposure—to effect changes that promote human rights.⁴⁷

When creating Universal Periodic Review, the Human Rights Council was met with the task of deciding on the legal basis, periodicity, sequence, modalities and functions of the review. The first cycle of review, which concluded in March 2012, provides the first opportunity to evaluate the efficacy of the review process as a whole, build on best practices and address challenges.

1.4 The Work and Functioning of Universal Periodic Review

The first cycle of Universal Periodic Review began on 7 April 2008 and formally concluded upon the adoption of the remaining reports during the 19th session of the Human Rights Council, which occurred from 27 February to 23 March 2012. Further to HRC resolution 60/251, which requires the Council to review its work and functioning five years following its establishment and report to the General Assembly, the Council adopted resolution 16/21,⁴⁸ reaffirming the basis, principles and objectives of Universal Periodic Review. The working group clarified and revisited the process and modalities of the review, including periodicity and order,⁴⁹ focus and documentation,⁵⁰ general modalities,⁵¹ the outcome of the review⁵² and follow-up to the review.⁵³

Originally, the periodicity of the review was based on four-year cycles, with 16 States reviewed during each session three times per year for a total of 12 sessions.⁵⁴ From June 2012 onwards,⁵⁵ each cycle is to span 4.5 years,⁵⁶ with 14 States reviewed per

⁴⁷ Edward R. McMahon, 'The Universal Periodic Review: A Work in Progress: An Evaluation of the First Cycle of the New UPR Mechanism of the United Nations Human Rights Council,' Friedrich Ebert Stiftung, September 2012, p. 8.

⁴⁸ Human Rights Council, 'Review of the Works and Functioning of the Human Rights Council,' 12 April 2011, A/HRC/16/21.

⁴⁹ *Ibid*, paras. 2-4.

⁵⁰ *Ibid*, paras. 5-9.

⁵¹ *Ibid*, paras. 10-14.

⁵² *Ibid*, paras. 15-16.

⁵³ *Ibid*, paras. 17-21.

⁵⁴ General Assembly, 'Establishing the Human Rights Council and the Universal Periodic Review,' 15 March 2006, A/RES/60/251.

⁵⁵ *Ibid*, para. 2.

⁵⁶ *Ibid*, para. 3.

session⁵⁷ during a total of 14 sessions,⁵⁸ which provides States with more time to prepare for the review, provide meaningful feedback, implement accepted recommendations and voluntary commitments, and follow-up on comments, questions, and recommendations posed to other States under review. Future cycles will follow the sequence of review established during the first cycle.⁵⁹

The objective of Universal Periodic Review is to enhance State capacity, share best practices and foster cooperation towards the promotion and protection of human rights at the ground level.⁶⁰ Universal Periodic Review provides United Nations Member States with the opportunity to disclose any barriers to the enjoyment of human rights in their respective country ‘based on objective and reliable information’⁶¹ and devise a plan for improvement through a process that aims to ensure equal treatment of all States and universality of coverage.⁶²

The review takes place in Geneva and is based on an interactive dialogue between States and Member and Observer States. The heart of the review process stems from reports submitted by the concerned State; a summary of reports submitted by relevant stakeholders prepared by the Office of the High Commissioner for Human Rights; and a compilation of United Nations documents on the human rights record of the State under review.⁶³ The State under review has the opportunity to make voluntary commitments to improve its human rights record within its national report, in its presentation during the interactive dialogue, or following the dialogue. During the first cycle of review, the interactive dialogue took place over a three-hour period, allowing the State one hour to present its national report and 2 hours for other States

⁵⁷ Human Rights Council, ‘Follow-up to the Human Rights Council Resolution 16/21 with regard to Universal Periodic Review,’ 19 July 2011, A/HRC/DEC/17/119.

⁵⁸ Human Rights Council, ‘Review of the Works and Functioning of the Human Rights Council,’ 12 April 2011, A/HRC/16/21, para. 3.

⁵⁹ *Ibid*, para. 4. As only 14 States are reviewed during each session, rather than 16, the final two States from the first session will be brought forward to the second session. The final four States in the second session will be brought forward to the third session and so on. See Appendices A and B for list of States under review per session during first and second cycles of review.

⁶⁰ Human Rights Council, ‘Institution-building of the United Nations Human Rights Council,’ 18 June 2006, A/HRC/5/1, para. 4(b).

⁶¹ *Ibid*, para.3(b).

⁶² *Ibid*, para. 3(c). See also Felice D. Gaer, ‘Scrutinizing Countries: The Challenge of Universal Periodic Review,’ (2006) 13 *Human Rights Brief* 9, p. 10.

⁶³ *Ibid*, para. 15. The word limit for reports prepared by relevant stakeholders is 10,700. ‘Reports originating in the Secretariat are subject to a page limit equivalent to 8,500 words.’ Human Rights Council, ‘Reports of the Working Group on the Universal Periodic Review,’ 19 July 2012, A/HRC/PRST/20/1.

to pose questions, comment and make recommendations. From the second cycle of review onwards, the time allotted towards the interactive dialogue for each review will increase from 3 hours to 3.5 hours, allowing the State under review 70 minutes of speaking time and other States 140 minutes to raise concerns, pose questions and make recommendations.⁶⁴

In consultation with the Secretariat and State under review, the troika (composed of three members of the United Nations Working Group who are drawn by lot) prepares a report of the proceedings of the review.⁶⁵ States have two weeks to raise any objections or add information following the preliminary adoption of the report. Final adoption of the report or outcome document takes place during the one-hour plenary session.⁶⁶ The report outlines recommendations posed by Member and Observer States and the concerned State's responses to those recommendations, questions and comments.⁶⁷ Following the review, the concerned State is required to implement accepted recommendations and voluntary commitments, which it will be held accountable for during the next cycle of review.⁶⁸ States and non-governmental organisations that participated in the review of the State concerned are encouraged to follow-up on proposed recommendations leading up to and during the following cycle of review.

Each United Nations Member State is evaluated according to its human rights record under international human rights instruments to which it is a party, the Charter of the United Nations,⁶⁹ the Universal Declaration of Human Rights⁷⁰ and applicable international humanitarian law. During future cycles of review, United Nations

⁶⁴ Human Rights Council, 'Follow-up to the Human Rights Council Resolution 16/21 with regard to Universal Periodic Review,' 19 July 2011, A/HRC/DEC/17/119, paras. 3-4.

⁶⁵ *Ibid.*, para. 18(d). As per resolution A/HRC/PRST/20/1, the word limit for reports of the Working group was increased from 9,630 to 10,700 words. Human Rights Council, 'Reports of the Working Group on the Universal Periodic Review,' A/HRC/PRST/20/1, 19 July 2012.

⁶⁶ During the one-hour plenary session, the State under review has 20 minutes to respond to the recommendations posed during the interactive dialogue and observer States have 20 minutes to express their impressions and opinions of the review. Stakeholders are able to provide general comments during the final 20 minutes, provided they do not raise any new issues that were not discussed during the interactive dialogue.

⁶⁷ Human Rights Council, 'Institution-building of the United Nations Human Rights Council,' 18 June 2006, A/HRC/5/1.

⁶⁸ *Ibid.*, paras. 33-38.

⁶⁹ *Charter of the United Nations* (adopted 26 June 1945, entered into force 24 October 1945).

⁷⁰ *Universal Declaration of Human Rights* (adopted 10 December 1948) United Nations General Assembly Resolution 217 A (III).

Member States will also be evaluated according to their implementation of accepted recommendations and voluntary commitments to improve their human rights record.⁷¹

2. Summary of Chapters

PART I: An Overview of Universal Periodic Review

Part I discusses the legal basis of Universal Periodic Review, identifies the roles of principal actors and explains the stages of the review process. It is intended to support understanding of the analysis and evaluation of Universal Periodic Review contained in Part II.

Chapter 2: Institution-building of the Human Rights Council on Universal Periodic Review

This chapter outlines the criteria, principles, objectives, outcomes modalities and practices of Universal Periodic Review found in Human Rights Council resolution 5/1,⁷² and explains recent changes following a review of the work and functioning of the Human Rights Council as set out in resolution 12/1.⁷³ To support State participation in the review and implementation of its outcome, the Human Rights Council established the United Nations Voluntary Fund for Participation in the Universal Periodic Review and the United Nations Voluntary Fund for Financial and Technical Assistance for Implementation of the Universal Periodic Review.⁷⁴

Chapter 3: Principal Actors in the Universal Periodic Review Process

Chapter 3 explains the roles of principal actors involved in the Universal Periodic Review process, which are the members of the Human Rights Council that form the Universal Periodic Review Working Group, three rapporteurs (the ‘troika’), States under review, relevant stakeholders and the Office of the High Commissioner for Human Rights. Finally, Universal Periodic Review is compared to the work of the Charter-based Special Procedures mechanism of the Human Rights Council and the

⁷¹ General Assembly, ‘Establishing the Human Rights Council and the Universal Periodic Review,’ 15 March 2006, A/RES/60/251.

⁷² Human Rights Council, ‘Institution-building of the Human Rights Council,’ 18 June 2006, A/HRC/RES/5/1.

⁷³ Human Rights Council, ‘Open-ended Intergovernmental Working Group on the Review of the Work and Functioning of the Human Rights Council,’ 12 October 2009, A/HRC/RES/12/1.

⁷⁴ Human Rights Council, ‘Establishment of Funds for the Universal Periodic Review Mechanism of the Human Rights Council,’ 28 September 2007, A/HRC/RES/6/17.

treaty bodies.⁷⁵ Every party involved in Universal Periodic Review carries out an integral role in ensuring the process functions in a way that meets intended outcomes in line with its principles and objectives, namely to improve the human rights situation on the ground'⁷⁶ through 'an intergovernmental... United Nations Member-driven'⁷⁷ process that ensures 'the participation of all relevant stakeholders'⁷⁸ and complements the other human rights mechanisms.⁷⁹

Chapter 4: Stages of the Universal Periodic Review Process

This chapter explains each unique stage of the review process. Every new cycle begins with consultations between the State concerned and relevant stakeholders in preparation for the submission of national and stakeholder reports. These reports, along with a compilation of United Nations documentation, form the basis for discussion among Member and Observer States during the interactive dialogue. The United Nations Working Group prepares an outcome report based on recommendations and voluntary commitments stemming from the dialogue, which the Human Rights Council adopts during its plenary session. States under review are expected to implement accepted recommendations and voluntary commitments in advance of the next cycle. Recommending States and relevant stakeholders assume an important role in monitoring and following-up on the status of State implementation of the outcome of the review.

PART II: An Evaluation of the Universal Periodic Review Process

Part II evaluates elements of the Universal Periodic Review process, including the indivisibility and interrelatedness of all human rights; State and regional participation during the review; the quality of recommendations and voluntary commitments; and implementation and follow-up on the outcome of the review in the context of the principles and objectives of the review process. The final chapter draws from the aforementioned analysis to discuss strategies to strengthen the Universal Periodic

⁷⁵ Human Rights Council Resolution 5/1, 'Institution-building of the United Nations Human Rights Council,' 18 June 2006, A/HRC/5/1.

⁷⁶ *Ibid*, p. 2, para. 4(a).

⁷⁷ *Ibid*, p. 2, para. 3(d).

⁷⁸ *Ibid*, p. 2, para. 3(m).

⁷⁹ *Ibid*, p. 2, para. 3(f).

Review process during future cycles by addressing challenges and solidifying best practices.

Chapter 5: Indivisibility and Interrelatedness of All Human Rights

General Assembly resolution 60/251 stipulates that ‘all human rights are universal, indivisible, interrelated, interdependent and mutually reinforcing, and that all human rights must be treated in a fair and equal manner, on the same footing and with the same emphasis.’⁸⁰ Human Rights Council resolution 5/1 reaffirms that ‘Equal attention should be paid to all human rights.’⁸¹ Chapter 5 discusses the challenges associated with equal and adequate coverage of each human right during Universal Periodic Review. As per the criteria set out for the review, the human rights obligations that each State is subject to vary, depending on which human rights treaties a given State has ratified. In addition to being subject to different obligations, each State faces a different set of challenges in relation to meeting those obligations, such as low levels of capacity and inadequate resources. For these reasons, the process is designed in such a way that cannot ensure human rights are ‘treated in a fair and equal manner’⁸² during the review. Furthermore, resource limitations necessitate timing restrictions during the interactive dialogue and word limits on reporting. If each human right receives equal coverage during the review process, none would be detailed in any sort of depth. Each of these factors presents a set of challenges that prevent the Universal Periodic Review process from achieving equal and adequate coverage of each human right. Chapter 5 further analyses whether it would be desirable to achieve this.

Chapter 6: State and Regional Behaviour during Universal Periodic Review

This chapter examines the nature of State and regional participation during Universal Periodic Review, using quantitative data to identify trends in participation that have developed during the first cycle of review. Drawing from qualitative data⁸³ collected from the review, this Chapter evaluates the quality of State participation and analyses

⁸⁰ General Assembly, ‘Establishing the Human Rights Council and the Universal Periodic Review,’ 15 March 2006, A/RES/60/251, preamble.

⁸¹ Human Rights Council Resolution 5/1, ‘Institution-building of the United Nations Human Rights Council,’ 18 June 2006, para.58(b).

⁸² General Assembly, ‘Establishing the Human Rights Council and the Universal Periodic Review,’ 15 March 2006, A/RES/60/251, preamble.

⁸³ Qualitative data is drawn from web casts, country reports, outcome documents and other relevant UPR-related material.

whether politicisation influences the review process. Based on the factors that influence data on State and regional participation and the overall quality of individual recommendations, a number of trends have emerged from the first cycle of review that could potentially foreshadow the dynamics of future cycles. Among these is a gap in participation between most active and least active States that correlates to the region to which the State belongs. Several factors influence the quality of State participation throughout the review, including the accessibility, inclusivity and thoroughness of consultations with civil society; cooperation and collaboration with non-governmental organisations and relevant stakeholders; the quality of State delegations; willingness to accept, implement and follow-up on recommendations; and the overall political and selective undertone of statements made during the review process.

Chapter 7: Evaluating Recommendations and Voluntary Commitments

Based on quantitative⁸⁴ and qualitative data, the normative framework of Universal Periodic Review is examined to assess the extent to which recommending States appear to rely on the criteria set out for the review, revealing that most recommendations do not cite the source of the obligation or commitment. Whilst States under review are to be held to account for *existing* human rights obligations, many recommendations centred on ratification of outstanding obligations..⁸⁵ The substance of the human rights raised by States during the interactive dialogue is likewise evaluated. This chapter further assesses different methods of categorising recommendations and examines the quality of recommendations made during the interactive dialogue. Much can be learned from categorising recommendations and voluntary commitments, including the level of action and length of time or resources required for implementation, which can be used to identify trends, strengths and weaknesses per State and regional group.

⁸⁴ Quantitative data is drawn from a database of recommendations and voluntary commitments available at UPR-info.org.

⁸⁵ Human Rights Council, 'Institution-building of the Human Rights Council,' 18 June 2006, A/HRC/RES/5/1, p. 2, para. 1.

Chapter 8: Implementation of and Follow-up on Accepted Recommendations and Voluntary Commitments

State implementation of accepted recommendations and voluntary commitments is a cornerstone of the review process, as this is the stage where improvement to the human rights situation begins to occur. The first part of this chapter discusses State capacity to implement recommendations and evaluates the resources available to States requiring assistance. Chapter 8 also outlines examples of best practices regarding implementation, including State preparation of national plans of action and mid-term implementation reports. Moving forward, recommending States and stakeholders must continue to stress the importance of implementation and work together to monitor, track, and follow-up with the State concerned.

Chapter 9: Strengthening Universal Periodic Review

Universal Periodic Review is an important tool for holding States accountable for their human rights records through transparent, periodic reviews of the human rights record of all United Nations Member States. However, like any tool, its efficacy depends on how it is used. Based on an evaluation of the work and functions of Universal Periodic Review measured against its principles, objectives and outcomes, it is clear that Universal Periodic Review is an imperfect mechanism, yet it boasts many successes. Chapter 9 identifies strengths and challenges emerging from the first cycle, providing specific examples, and draws from lessons learned to identify best practices and recommend reform.

3. Selection of Literature and Other Sources

Although no books have been published on the topic of Universal Periodic Review at the time of writing, all available academic articles on this subject have been consulted. There is, however, a wealth of academic material available regarding the work of the Commission on Human Rights, the Human Rights Council, the Special Procedures, and the work of the Treaty Bodies, which have also been consulted. The following sources have been used to inform this thesis: international human rights treaties and optional protocols, applicable international humanitarian law, general comments, reports and recommendations of the treaty bodies and special procedures, documentation that forms the basis for review, implementation strategies prepared by

the State under review, live webcasts of review proceedings, information prepared by non-governmental organisations, and conference reports and materials.

4. Methodology

Drawing from the sources noted above, the methodology employed for this doctoral thesis centres on an evaluation and analysis of the Universal Periodic Review process.

The primary resources consulted for Part I: An Overview of Universal Periodic Review are relevant General Assembly and Human Rights Council resolutions, Human Rights Council sessional and annual reports, as well as information prepared by the Office of the High Commissioner for Human Rights, States under review, and non-governmental organisations. This information is collated and summarised to explain the legal basis for and modalities, principles, objectives and outcomes of Universal Periodic Review, whilst explaining the role of relevant stakeholders.

Part II undertakes a more analytical approach that builds from the information discussed in Part I and assesses the review process in practice based largely on an analysis of the first cycle of review, supported by examples. Upr-info.org maintains a database of statements made during the review process, including a record of the recommending State and its statement, the State under review and its response, the type of issue raised and the session where the recommendation can be found. Users are able to search the database according to a set of criteria, including the State under review, the recommending State, the issue raised, recommendations and/or voluntary commitments and according to key words. The database also specifies action categories for each recommendation and voluntary commitment on a scale of 1 to 5, which classifies whether it requires minimal action (1), continuing action (2), considering action (3), general action (4) and specific action (5). This database has proved to be an invaluable tool in identifying specific examples that are further investigated by referring to official United Nations documents on Universal Periodic Review, particularly when discussing the indivisibility and interrelatedness of all human rights (Chapters 5), assessing State and regional participation (Chapter 6) and evaluating the quality of recommendations and voluntary commitments (Chapter 7).

When analysing State implementation of accepted recommendations and voluntary commitments, information is primarily drawn from information prepared by the State

under review and contrasted against the findings of relevant stakeholders and recommending States during the follow-up process to evaluate the quality and thoroughness of implementation. Although Universal Periodic Review is in its early stages, there is significant evidence of State implementation of recommendations and voluntary commitments, as reflected by the submission of mid-term implementation reports and national reports submitted in the second cycle.

The final chapter on strengthening Universal Periodic Review pools information from the aforementioned analysis, coupled with stakeholder and State assessments of the review process to identify key challenges and best practices that have arisen during the first cycle of review. By addressing gaps and building on existing strengths in the context of the principles, objectives and intended outcomes, Universal Periodic Review could evolve into a more effective process that better enhances the realisation of human rights at the ground level.

5. Preliminary Observations of the Review Process

Universal Periodic Review creates a forum where every United Nations Member State is subject to periodic review of its human rights obligations. Although treaty bodies periodically review a Member State's adherence international human rights treaties, not all human rights are covered and not all States have ratified each treaty, which means that not all United Nations Member States can be held accountable before all treaty bodies. States that are not subject to treaty body review can still be held accountable during Universal Periodic Review by relying on the Universal Declaration of Human Rights. For instance, only States that have ratified the Convention against Torture and Other Cruel, Inhuman and Degrading Punishment or the International Covenant on Civil and Political Rights are subject to treaty body review by the Committee against Torture or Human Rights Committee respectively. States beyond the reach of treaty body scrutiny can be held accountable for practicing torture during Universal Periodic Review as per Article 5⁸⁶ of the Universal Declaration of Human Rights, which stipulates that 'No one shall be subjected to torture, inhuman or degrading treatment or punishment.' In this way, Universal Periodic Review provides a means for filling the gaps that exist at the treaty body level without overlapping with

⁸⁶ Article 5 of the *Universal Declaration of Human Rights* stipulates that 'No one shall be subjected to torture, inhuman or degrading treatment or punishment.'

their work. The review process also boasts a higher participation rate than treaty bodies among States, which demonstrates a perception of legitimacy and credibility among United Nations Member States.⁸⁷ Universal Periodic Review provides a platform to urge States to welcome visits from special rapporteurs, cooperate with special procedures, follow treaty body procedures, implement their recommendations and make voluntary commitments to improve their overall human rights record.

Aside from filling gaps for reviewing human rights obligations not covered by the UN treaty bodies, Universal Periodic Review brings human rights issues to the forefront of discussions at a national and international level among States and relevant stakeholders. As a result, States must continually monitor, evaluate, report on and improve their human rights record against the backdrop of global scrutiny.

Universal Periodic Review can be used as a tool for gauging when a State is unable to fulfil its international human rights obligations due to a lack of resources, allowing the international community to respond by providing assistance. The Voluntary Fund for Financial and Technical Assistance, established by the Human Rights Council to support State cooperation with Universal Periodic Review, is available as a 'source of financial and technical assistance to help countries, in particular least developed countries and small island developing States, to implement the recommendations emanating from their review.'⁸⁸

A library of information on human rights obligations and their fulfilment has become more readily available online in the form of documentation prepared by the Office of the High Commissioner for Human Rights, relevant stakeholders and the State under review. Live webcasts of each interactive dialogue are also available online. Once the United Nations Working Group adopts the outcome of the review, it is published online, along with a summary of questions and comments raised during the interactive

⁸⁷ Human Rights Council, 'Support of the Human Rights Council for the Recovery Process in Haiti after the Earthquake of 12 January 2010: A Human Rights Approach,' 28 January 2010, A/HRC/S-13/1, p. 2, para. 10. Haiti was unable to undergo its review when scheduled (in May 2010) due to the devastating earthquake in Haiti on 12 January 2010, as country's resources needed to be redirected towards emergency disaster relief. Haiti's review was rescheduled and took place in October 2011. As such, there was 100% participation among UN Member and Observer States during the first cycle of review. The second cycle of review, however, may not achieve the same success rate for participation after Israel failed to submit its national report and attend its own review originally scheduled for 29 January 2013.

⁸⁸ Human Rights Council, 'Review of the Works and Functioning of the Human Rights Council,' 12 April 2011, A/HRC/16/21, para. 14.

dialogue.⁸⁹ Human rights information compiled during the review process provides an unprecedented tool for determining the positions of countries on specific human rights issues, identifying gaps in existing human rights protection, lobbying States to fill these gaps, and following-up on the human rights obligations of States.

Despite its many advantages, Universal Periodic Review is in its early stages and requires evaluation to improve the realisation of human rights at the ground level in future cycles. At this stage, the full degree to which States have implemented their accepted recommendations and voluntary commitments remains to be seen, although several States have already implemented national plans of action to reform domestic policies and laws. Others have since ratified key human rights treaties.⁹⁰

Another setback of Universal Periodic Review is the limited involvement of civil society. The Office of the High Commissioner on Human Rights collates and summarises reports submitted by non-governmental organisations, which risks diluting the substance of the issues raised. Whereas the State under review presents its national report during the interactive dialogue, there is no point at which the summary of stakeholder reports is presented. As stakeholders are likewise unable to take the floor during the interactive dialogue, their voice is silenced at this stage unless they lobby recommending States to raise issues on their behalf. States must not overlook input from academic institutions, legal associations, health care professionals and economists when consulting with civil society prior to drafting a national report.

As the only formal periodic international system of reviewing all United Nations Member States' human rights records, Universal Periodic Review should reflect the highest standard of transparency, accountability and fairness. In order to distinguish itself from the Commission on Human Rights, the Human Rights Council must demonstrate concrete improvements in the situation of human rights at the ground level through the Universal Periodic Review process. Through an exploration of the significance of the creation of Universal Periodic Review and its impact, this thesis

⁸⁹ See Office of the High Commissioner for Human Rights, 'Universal Periodic Review: Documentation,' available at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/Documentation.aspx>

⁹⁰ For instance, seven States have ratified the *Convention against Torture*, during or following the first cycle of review. These States are Rwanda (15 December 2008), Bahamas (16 December 2008), Vanuatu (12 July 2011), Pakistan (23 July 2010), Loa People's Democratic Republic (21 September 2010), Palau (20 September 2011), and the Dominican Republic (24 January 2012).

reveals that the review process marks a significant step forward in human rights protection and promotion, bearing in mind that its degree of success rests with the full participation and cooperation of all parties involved at each stage of the process. As Universal Periodic Review is in its infancy, it is to be expected that it will evolve over time, indeed, as it already has since its inception, towards achieving optimal outcomes.

PART I:

An Overview of Universal Periodic Review

Chapter 2

Institution-building of the Human Rights Council on Universal Periodic Review

This chapter outlines the binding and non-binding criteria against which States are held to account under the Universal Periodic Review process; explores the principles, objectives and outcomes of the review; explains general guidelines for relevant stakeholders, and summarises the modalities and practices for the review process. Also discussed are the criteria for the Voluntary Trust Fund, Voluntary Fund for Financial and Technical Assistance, and Voluntary Fund for Technical Assistance and Cooperation.⁹¹ This chapter later outlines key reforms proposed by an open-ended intergovernmental working group, established by the Human Rights Council in resolution 12/1,⁹² in its report on the ‘Outcome of the review of the Work and Functioning of the United Nations Human Rights Council,’⁹³ which was adopted by the Council in resolution 16/21. Human Rights Council resolution 17/119 further clarifies the reforms adopted in resolution 16/21, which are to apply from the second cycle onwards.

1. Legal Sources of Universal Periodic Review

General Assembly resolution 60/251 of 15 March 2006 established the Human Rights Council, tasking it with commencing a Universal Periodic Review of each United Nations Member State’s human rights record based on:

objective and reliable information, of the fulfilment by each State of its human rights obligations and commitments in a manner which ensures the universality of coverage and equal treatment with respect to all States; the review shall be

⁹¹ General Assembly, ‘Establishment of Funds for the Universal Periodic Review Mechanism of the Human Rights Council,’ 28 September 2007, A/RES/61/17; Office of the High Commissioner for Human Rights, ‘Terms of Reference for the Voluntary Fund for Financial and Technical Assistance for the Implementation of the Universal Periodic Review,’ 2009, available at: http://www.ohchr.org/Documents/HRBodies/UPR/TOR_TF_for_TC_assistance_UPR.pdf, para. 14, p. 3; Human Rights Council, ‘Enhancement of Technical Cooperation and Capacity-building in the Field of Human Rights,’ 17 October 2011, A/HRC/18/18.

⁹² Human Rights Council, ‘Open-ended Intergovernmental Working Group on the Review of the Work and Functioning of the Human Rights Council,’ 12 October 2009, A/HRC/RES/12/1.

⁹³ Human Rights Council, ‘Resolution adopted by the Human Rights Council: Review of the Work and Functioning of the Human Rights Council,’ 12 April 2011, A/HRC/RES/16/21.

a cooperative mechanism, based on an interactive dialogue, with the full involvement of the country concerned and with consideration given to its capacity-building needs; such a mechanism shall complement and not duplicate the work of the treaty bodies; the Council shall develop the modalities and necessary time allocation for the universal Periodic review.⁹⁴

The resolution further stipulates that members of the Human Rights Council must ‘uphold the highest standards in the promotion and protection of human rights’ and ‘fully cooperate with the Council.’⁹⁵ This is likely a reflection of the General Assembly wishing to distinguish the Council from its predecessor, the Commission on Human Rights, which fell into disrepute, in part, due to the membership of countries known to be persistent violators of human rights that sought membership to evade criticism.⁹⁶

During its first session, the Human Rights Council established ‘an intersessional open-ended intergovernmental working group to develop the modalities of the review mechanism,’⁹⁷ including the terms of reference/basis of review.⁹⁸ Within six months of operation, the Working Group agreed for the review to be based on ‘the United Nations Charter, the Universal Declaration of Human Rights, human rights instruments to which a State is party and voluntary pledges and commitments made by States, including those undertaken when presenting their candidatures for election to the Human Rights Council.’⁹⁹ At this point, however, the Working Group was still debating whether the following should also form the basis for review: ‘national

⁹⁴ General Assembly, ‘Establishing the Human Rights Council and the Universal Periodic Review,’ 15 March 2006, A/RES/60/251, p. 3, para. 4(e).

⁹⁵ *Ibid.*

⁹⁶ Philip Alston, ‘Richard Lillich Memorial Lecture: Promoting the Accountability of Members of the New Human Rights Council,’ (2005-2006) 15 *Journal of Transnational Law and Policy* 49. See also Philip Alston, ‘Reconceiving the UN Human Rights Regime: Challenges Confronting The New UN Human Rights Council,’ (2006) *Melbourne Journal of International Law* 7 and Rosa Freedman, *The United Nations Human Rights Council: A Critique and Early Assessment* (Routledge, Oxon 2013); Jerome J. Shestack, ‘The Commission on Human Rights: Pitfalls, Progress and a New Maturity,’ in Seymore M. Finger and Joseph R. Harbert (eds), *U.S. Policy in International Institutions: Defining Reasonable Options in an Unreasonable World*. (Boulder, Westview Press 1982); Tait, Carney, ‘The United Nations Human Rights Council’, (2007) 8 *Human Rights and UK Practice* 34.

⁹⁷ Human Rights Council, ‘The Universal Periodic Review,’ 30 June 2006, A/HRC/DEC/1/103, pp. 2-3, para. 1.

⁹⁸ Human Rights Council, ‘Implementation of General Assembly Resolution 60/251 of 15 March 2006 Entitled ‘Human Rights Council’: Intersessional Open-Ended Intergovernmental Working Group to Develop the Modalities of the Universal Periodic Review Mechanism Established Pursuant to Human Rights Council Decision 1/103.’ 30 November 2006, A/HRC/3/3, p. 3, para. 5.

⁹⁹ *Ibid.*, p. 4, para. A.

consultations, legislation and domestic laws, international customary law and other human rights standards, international humanitarian law, commitments in United Nations conferences and summits, [and] existing information, including the conclusions and recommendations of treaty bodies and special procedures.’¹⁰⁰

Stemming from the outcome of negotiations among members of the Working Group, Human Rights Council resolution 5/1 of 18 June 2006 adopted the basis for review as suggested originally suggested by the Working Group, but further stipulated:

In addition to the above and given the complementary and mutually interrelated nature of international human rights law and international humanitarian law, the review shall take into account applicable international humanitarian law.¹⁰¹

As a preliminary observation, the resolution appears to contain a contradiction. Whereas the Human Rights Council calls for ‘equal attention...to all human rights,’¹⁰² a State under review is held accountable under international human rights treaties to which it is a party. This means that the human rights obligations of each State under international human rights law vary. A State that is a party to very few international human rights treaties is thus held to account for fewer obligations and ‘judged less severely’¹⁰³ than a State that is a party to the majority of international human rights treaties. Similarly, a State that makes fewer voluntary commitments is held to a lower standard in subsequent reviews than a State that has made substantial commitments and pledges. ‘The fewer standards, the less likely it is that violations of those standards will be pointed out.’¹⁰⁴ For these reasons, it would be impossible to achieve ‘equal attention...to all human rights’ throughout the review process.

Of the human rights instruments that constitute the criteria for the review, the Charter of the United Nations ‘does not establish any particular regime of human rights protection, and the emphasis is upon non-intervention in the affairs of Member States

¹⁰⁰ *Ibid*, para. B.

¹⁰¹ Human Rights Council, ‘Institution-building of the United Nations Human Rights Council,’ 18 June 2006, A/HRC/5/1, para. 1.

¹⁰² *Ibid*, p. 7, para. 58(b).

¹⁰³ Nadia Bernaz, ‘Reforming the UN Human Rights Protection Procedures: A Legal Perspective on the Establishment of the Universal Periodic Review Mechanism,’ in Kevin Boyle, (ed) *New Institutions for Human Rights Protection* (Oxford, Oxford University Press 2009), p. 81.

¹⁰⁴ *Ibid*.

of the United Nations.¹⁰⁵ Article 1 of the Charter sets out a commitment of the international community to cooperate in the promotion and ‘respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion.’¹⁰⁶ To this end, Article 55(c) discusses the role of the United Nations:

With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote... (c) universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.¹⁰⁷

Article 56 requires Member States to ‘take joint and separate action in cooperation with the [United Nations] to achieve this.’ Although these provisions do not define human rights and fundamental freedoms, they underscore the role of the international community and United Nations in achieving respect for these standards. However, Article 2(7) of the Charter denies the United Nations power to ‘intervene in matters essentially within the domestic jurisdiction of any state.’¹⁰⁸ Universal Periodic Review embodies the legal principles set out in Articles 1, 55(c) and 56 by providing a forum for the international community to cooperate in advancing human rights protection at the ground level, whilst granting States the discretion to accept or reject recommendations stemming from the interactive dialogue of Universal Periodic Review in line with Article 2(7).

The Universal Declaration of Human Rights establishes a ‘common standard of achievement...to promote respect for these rights and freedoms’¹⁰⁹ Inclusion of the Declaration in the criteria for the review indicates that that the review is based on binding obligations under international human rights treaties and on non-binding standards or soft law instruments.¹¹⁰ As will be discussed in Chapter 7: Evaluating

¹⁰⁵ Rehman, Javaid, ‘The United Nations System and the Modern Human Rights Regime,’ in *International Human Rights Law* (Pearson, Harlow 2010), p. 30.

¹⁰⁶ *Charter of the United Nations* (adopted 26 June 1945, entered into force 24 October 1945), Article 1.

¹⁰⁷ *Ibid.*, Article 55(c).

¹⁰⁸ *Ibid.*

¹⁰⁹ *Universal Declaration of Human Rights* (adopted 10 December 1948) United Nations General Assembly Resolution 217 A (III), preamble.

¹¹⁰ Nadia Bernaz, ‘Reforming the UN Human Rights Protection Procedures: A Legal Perspective on the Establishment of the Universal Periodic Review Mechanism,’ in Kevin Boyle, (ed) *New Institutions for Human Rights Protection* (Oxford, Oxford University Press 2009), p. 77.

Recommendations and Voluntary Commitments, inclusion of the Declaration could serve as a tool to widen the scope of accountability when a State under review is not party to the international human rights treaties. States must be careful not to rely solely on the Declaration as the source of their recommendations when binding legal obligations do exist in international human rights law to which the State is a party, as to do so would actually weaken the legal basis of the recommendation. However, ‘it is often said that the Universal Declaration of Human Rights constitutes a codification of customary international law and that therefore states are bound to the norms it sets out even in the absence of a convention obligation.’¹¹¹

As touched on earlier, international human rights treaties to which the State under review is a party¹¹² likewise form a part of the basis of review. In developing the modalities for Universal Periodic Review, the Intersessional Open-Ended Intergovernmental Working Group proposed that Universal Periodic Review should

examine the relationship between the State under review and the instruments to which it is party, including the status of ratification or accession; the status of reservations, if any, entered by the State to specific instruments, and any action undertaken to withdraw them, as well as any action undertaken to follow-up and implement the concluding observations of relevant treaty bodies. It was also expressed that obligations arising from treaties to which States are not party should be explicitly precluded from UPR since States were neither obligated to fulfil them nor had made commitments to do so.

This understanding of the complementarity of Universal Periodic Review and the treaty bodies is the approach currently adopted by the Human Rights Council, except for in relation to the status of ratification. The Working Group debated and rejected the inclusion of calling for ratification as forming the basis for the review process. Representing the European Union, Finland suggested that ‘for those states that have not ratified treaties, the mechanism will provide a forum for discussing human rights compliance on the basis of the information from different sources.’¹¹³ International

¹¹¹ William A. Schabas, ‘On the Binding Nature of the Findings of the Treaty Bodies,’ in M. Cherif Bassiouni and William A. Schabas, *New Challenges for the UN Human Rights Machinery* (Intersentia, Cambridge 2011), p. 103.

¹¹² Patrick James Flood, *The Effectiveness of UN Human Rights Institutions* (Westport, Praeger Publishers 1998), p. 5.

¹¹³ Office of the High Commissioner for Human Rights, Secretariat of the Human Rights Council, ‘Updated Compilation of Proposals and Relevant Information on the Universal Periodic Review,’ 5 April 2007, p. 31; Nadia Bernaz, ‘Reforming the UN Human Rights Protection Procedures: A Legal Perspective on the Establishment of the Universal Periodic Review Mechanism,’

Women's Rights Action Watch echoed Finland's proposal, recommending that 'The UPR mechanism could be utilised to urge countries to ratify all Treaties and Optional Protocols not ratified by the State.'¹¹⁴ However, Finland's proposal failed, largely due to the subsequent statements of Algeria and Singapore. Algeria made an oral statement on behalf of the African Group on 8 September 2006, indicating that 'No State can be held accountable for obligations pertaining to a treaty that they have not ratified.'¹¹⁵ Singapore went into more detail, stating 'the review would focus on each State's human rights *obligations* and *commitments*. To my delegation, this clearly precludes judging States against treaties and conventions that they have not ratified, since they are neither obligated to fulfil them nor have made a commitment to do so.'¹¹⁶ The views of Algeria and Singapore are consistent with Article 24 of the Vienna Convention on the Law of Treaties, which stipulates that 'a treaty does not create either obligations or rights for a third State without consent.'¹¹⁷

Whereas recommendations regarding ratification are seen as outside the scope of the basis of review, calls to implement recommendations of the treaty bodies and withdraw reservations¹¹⁸ are considered to 'complement and not duplicate the work of treaty bodies.'¹¹⁹ 'Discussing how states fulfil them, hence ensuring their follow-up, would be clearly valuable, but it must be said that this exercise would remain outside the sphere of binding international law.'¹²⁰ Another distinction between the two mechanisms is that the scope of Universal Periodic Review extends beyond the core

in Kevin Boyle, (ed) *New Institutions for Human Rights Protection* (Oxford, Oxford University Press 2009), p. 79.

¹¹⁴ Office of the High Commissioner for Human Rights, Secretariat of the Human Rights Council, 'Updated Compilation of Proposals and Relevant Information on the Universal Periodic Review,' 5 April 2007, p. 130.

¹¹⁵ *Ibid.*, p. 10.

¹¹⁶ *Ibid.*, p. 86.

¹¹⁷ *Vienna Convention on the Law of Treaties* (adopted 23 May 1969, entered into force 27 January 1980) United Nations Treaty Series, vol. 1155.

¹¹⁸ Jeremy McBride, 'Reservations and the Capacity to Implement Human Rights Treaties,' in J. P. Gardner, *Human Rights as General Norms and A State's Right to Opt Out: Reservations and Objections to Human Rights Conventions* (The British Institute of International and Comparative Law, London 1997), pp. 120-121.

¹¹⁹ Human Rights Council, 'Implementation of General Assembly Resolution 60/251 of 15 March 2006 Entitled 'Human Rights Council': Second Session of the Intersessional Open-Ended Intergovernmental Working Group to Develop the Modalities of the Universal Periodic Review Mechanism Established Pursuant to Human Rights Council Decision 1/103,' 13 March 2007, A/HRC/4/CRP.3, p. 5, para. 13; General Assembly, 'Establishing the Human Rights Council and the Universal Periodic Review,' 15 March 2006, A/RES/60/251, p. 3, para. 5(e).

¹²⁰ Nadia Bernaz, 'Reforming the UN Human Rights Protection Procedures: A Legal Perspective on the Establishment of the Universal Periodic Review Mechanism,' in Kevin Boyle, (ed) *New Institutions for Human Rights Protection* (Oxford, Oxford University Press 2009), p. 82.

international human rights treaties on which the treaty bodies focus, to include other international human rights instruments, such as the Convention Relating to the Status of Refugees¹²¹ and the Convention on the Prevention and Punishment of the Crime of Genocide.¹²² There is, however, still potential for the recommendations of the treaty bodies to overlap with those made during Universal Periodic Review; the degree to which such overlap occurs is discussed in Chapter 3: Principal Actors in the Universal Periodic Review Process under sub-section 8 on Human Rights Treaty Bodies.

‘Voluntary commitments and pledges made by States, including those undertaken when presenting candidatures for election to the Human Rights Council’¹²³ form the fourth basis of review in line with the outcome of the review, which is to include ‘voluntary commitments and pledges made by the country under review.’¹²⁴ The nature of these commitments will vary from State to State and evolve over time, which was the subject of much debate when deciding the modalities for the review, because ‘they may not apply equally to all states and thus, would not be consistent with the principles of universality of coverage and equal treatment of states.’¹²⁵ Including voluntary commitments and pledges in the basis for the review could inadvertently have an adverse effect if States become more reluctant to make commitments in an effort to evade criticism.¹²⁶ Although States under review are held accountable for voluntary commitments during the interactive dialogue, these pledges are ‘soft law commitments’¹²⁷ that are not legally binding and thus do not share the same status under international human rights law as binding treaties. However, over time, these

¹²¹ *Convention Relating to the Status of Refugees* (adopted 28 July 1951, entered into force 22 April 1954) United Nations Treaty Series vol. 189.

¹²² *Convention for the Prevention and Punishment of the Crime of Genocide* (adopted 9 December 1948, entered into force 12 January 1951) United Nations Treaty Series vol. 78.

¹²³ Human Rights Council, ‘Institution-building of the United Nations Human Rights Council,’ 18 June 2006, A/HRC/5/1, para. 1(d).

¹²⁴ *Ibid.*, p. 4, para. 5(e).

¹²⁵ Human Rights Council, ‘Implementation of General Assembly Resolution 60/251 of 15 March 2006 Entitled ‘Human Rights Council’: Second Session of the Intersessional Open-Ended Intergovernmental Working Group to Develop the Modalities of the Universal Periodic Review Mechanism Established Pursuant to Human Rights Council Decision 1/103,’ 13 March 2007, A/HRC/4/CRP.3, p. 5, para. 14.

¹²⁶ Nadia Bernaz, ‘Reforming the UN Human Rights Protection Procedures: A Legal Perspective on the Establishment of the Universal Periodic Review Mechanism,’ in Kevin Boyle, (ed) *New Institutions for Human Rights Protection* (Oxford, Oxford University Press 2009), pp. 82-82.

¹²⁷ *Ibid.*, p. 80.

soft law commitments could ‘serve as a basis for the development of future hard law norms, treaty embodied or of a customary nature.’¹²⁸

Apart from the above binding international human rights obligations and non-binding soft law commitments, Universal Periodic Review ‘shall take into account applicable international humanitarian law.’¹²⁹ This was the result of a compromise proposed by the Facilitator and Vice-President of the Human Rights Council, Mr. Mohammed Loulichki after United Nations Member States struggled to agree over the inclusion of international humanitarian law as a basis for review.¹³⁰ Whereas it could be argued that ‘only human rights instruments were applicable to the work of the Council...and the Council should not review States’ compliance with IHL as it was not equipped to assess detailed and specific issues in this regard,’¹³¹ the compromise recognised the interrelationship between international human rights law and international humanitarian law. In support of the compromise, the Facilitator

noted that similarities between these two distinct branches of international law included the common objective to preserve life and human dignity in all circumstances and various core provisions, such as the right to life; the prohibition against torture and other cruel or degrading treatment; and the prohibition against slavery.¹³²

There are some fundamental differences between the inclusion of ‘*applicable* international humanitarian law’¹³³ and the other basis of review. For instance, international human rights law applies at all times, whereas international humanitarian

¹²⁸ *Ibid*, p. 83.

¹²⁹ Human Rights Council, ‘Institution-building of the United Nations Human Rights Council,’ 18 June 2006, A/HRC/5/1, para. 2.

¹³⁰ Non-Paper on the Universal Periodic Review Mechanism: Prepared under the Authority of the Facilitator and Vice-President of the Human Rights Council: H.E. Mr. Mohammed Loulichki (Morocco), 27 April 2007, available at: <http://www.ohchr.org/Documents/HRBodies/SP/AMeetings/14thsession/UPR-27.04.07.pdf>

¹³¹ Human Rights Council, ‘Implementation of General Assembly Resolution 60/251 of 15 March 2006 Entitled ‘Human Rights Council’: Second Session of the Intersessional Open-Ended Intergovernmental Working Group to Develop the Modalities of the Universal Periodic Review Mechanism Established Pursuant to Human Rights Council Decision 1/103,’ 13 March 2007, A/HRC/4/CRP.3, p. 5, para. 15.

¹³² Human Rights Council, ‘Implementation of General Assembly Resolution 60/251 of 15 March 2006 Entitled ‘Human Rights Council’: Second Session of the Intersessional Open-Ended Intergovernmental Working Group to Develop the Modalities of the Universal Periodic Review Mechanism Established Pursuant to Human Rights Council Decision 1/103,’ 13 March 2007, A/HRC/4/CRP.3, pp. 6-7, para. 16.

¹³³ Human Rights Council, ‘Institution-building of the United Nations Human Rights Council,’ 18 June 2006, A/HRC/5/1, para. 2.

law ‘only applies to situations of armed conflict.’¹³⁴ A second distinction is that States have the possibility to derogate from certain provisions within international human rights treaties, while no such derogation is permitted under instruments of international humanitarian law.¹³⁵ In situations of armed conflict, reliance on international humanitarian law may provide protection for human rights contained in a provision within an international human rights instrument from which the State concerned has derogated.

States should shape their recommendations according to the strengths and weaknesses of each basis of review in order to fill gaps in human rights protection. For information regarding the extent to which the legal basis of Universal Periodic Review is reflected in the recommendations and voluntary commitments stemming from the review process, please refer to Chapter 7: Evaluating Recommendations and Voluntary Commitments.

2. Principles, Objectives and Outcomes of Universal Periodic Review

Resolution 5/1 also established the principles, objectives and outcomes of Universal Periodic Review,¹³⁶ which provide a basis for measuring the efficacy of the review process against its outcome. The principles guiding the Universal Periodic Review process are to:

- a. promote the universality, interdependence, indivisibility and interrelatedness of all human rights;
- b. be a cooperative mechanism based on objective and reliable information and on interactive dialogue;
- c. ensure universal coverage and equal treatment of all States;
- d. be an intergovernmental process, United Nations Member-driven and action-oriented;
- e. fully involve the country under review;

¹³⁴ Human Rights Council, ‘Implementation of General Assembly Resolution 60/251 of 15 March 2006 Entitled ‘Human Rights Council’: Second Session of the Intersessional Open-Ended Intergovernmental Working Group to Develop the Modalities of the Universal Periodic Review Mechanism Established Pursuant to Human Rights Council Decision 1/103,’ 13 March 2007, A/HRC/4/CRP.3, p. 6, para. 16.

¹³⁵ *Ibid.*

¹³⁶ Human Rights Council, ‘Institution-building of the United Nations Human Rights Council,’ 18 June 2006, A/HRC/5/1.

- f. complement and not duplicate other human rights mechanisms, thus representing an added value;
- g. be conducted in an objective, transparent, non-selective, constructive, non-confrontational and non-politicized manner;
- h. not be overly burdensome to the concerned State or to the agenda of the Council;
- i. not be overly long; it should be realistic and not absorb a disproportionate amount of time, human and financial resources;
- j. not diminish the Council's capacity to respond to urgent human rights situations;
- k. fully integrate a gender perspective;
- l. without prejudice to the obligations contained in the elements provided for in the basis of review, take into account the level of development and specificities of countries;
- m. ensure the participation of all relevant stakeholders, including non-governmental organizations and national human rights institutions, in accordance with General Assembly resolution 60/251 of 15 March 2006 and Economic and Social Council resolution 1996/31 of 25 July 1996, as well as any decisions that the Council may take in this regard.¹³⁷

In terms of its objectives, Universal Periodic Review must:

- a. fully engage the State concerned in the review process, including during a 3.5 hour interactive dialogue among the State concerned and United Nations Member and Observer States;
- b. take State 'capacity-building needs' into consideration;
- c. ensure all States receive equal treatment; and,
- d. 'complement and not duplicate the work of treaty bodies.'¹³⁸

The outcome of Universal Periodic Review is recorded in a 'report consisting of a summary of the proceedings of the review process; conclusions and/or recommendations and the voluntary commitments of the State concerned.'¹³⁹ Before the outcome is adopted, the State under review responds to questions and issues 'that were not sufficiently addressed during the interactive dialogue.'¹⁴⁰ Along with members of the Working Group and other relevant stakeholders, the State under

¹³⁷ *Ibid*, quoted directly from para. 3.

¹³⁸ *Ibid*, para. 4.

¹³⁹ *Ibid*, para. 26.

¹⁴⁰ *Ibid*, para. 29.

review has the opportunity to convey its perspectives regarding the outcome.¹⁴¹ The Council will adopt an outcome report regarding recommendations that have been accepted or rejected by the State concerned, along with relevant commentary.¹⁴²

As per Human Rights Council resolution 5/1, the content of the outcome of Universal Periodic Review must include:

- a. an assessment undertaken in an objective and transparent manner of the human rights situation in the country under review, including positive developments and the challenges faced by the country;
- b. sharing of best practices;
- c. an emphasis on enhancing cooperation for the promotion and protection of human rights;
- d. the provision of technical assistance and capacity-building in consultation with and with the consent of, the country concerned; and,
- e. voluntary commitments and pledges made by the country under review.¹⁴³

3. Guidelines for Stakeholders

Adopted by the Human Rights Council on 27 September 2007, decision 6/102 clarifies the general guidelines for States, stakeholders and the Office of the High Commissioner for Human Rights on preparing documentation for consideration during the Universal Periodic Review process, as well as the methodology for collecting and presenting this information.¹⁴⁴ States are required to submit information on the normative framework of human rights promotion and protection in their country over the last four and a half years,¹⁴⁵ including best practices, challenges and limitations. The normative framework should outline the national human rights infrastructure, including constitutional human rights protections, and relevant legislation, jurisprudence and policy measures.¹⁴⁶

¹⁴¹ *Ibid.*, paras. 30-31.

¹⁴² *Ibid.*

¹⁴³ *Ibid.*, para. 27.

¹⁴⁴ General Assembly, 'General Guidelines for the Preparation of Information under the Universal Periodic Review,' 27 September 2007, A/RES/6/102.

¹⁴⁵ Human Rights Council, 'Review of the Works and Functioning of the Human Rights Council,' 12 April 2011, A/HRC/16/21, para. 3. As per resolution 16/21, States are now reviewed every 4.5 years.

¹⁴⁶ *Ibid.*

4. Modalities and Practices of the Universal Periodic Review Process

On 9 April 2008, the President of the Human Rights Council made a statement establishing the modalities and practices for Universal Periodic Review, clarifying the role of the troika and Working Group in facilitating the review process during the interactive dialogue, Working Group session, and the plenary session of the Human Rights Council.¹⁴⁷ The statement also outlines the parameters for the preparation of formal documentation by the Universal Periodic Review. The President made a follow-up statement in September 2008, following consultation with the Council, which clarifies guidelines for documentation arising from Universal Periodic Review, such as the Working Group report, a written statement of responses to recommendations, and voluntary commitments.¹⁴⁸

5. Funds to Support States during the Universal Periodic Review Process

On behalf of States in the African region, the representative of Egypt submitted draft resolution A/HRC/6/L.12/Rev.1 to establish a fund to support the Universal Periodic Review mechanism¹⁴⁹ in line with the objective to enhance ‘State’s capacity and of technical assistance, in consultation with, and with the consent of, the State concerned,’¹⁵⁰ placing ‘emphasis on enhancing cooperation for the promotion and protection of human rights.’¹⁵¹ The draft resolution was adopted without a vote,¹⁵² establishing the Voluntary Trust Fund for Participation in the Universal Periodic Review Mechanism ‘to facilitate the participation of developing countries, particularly least developed countries, in the universal periodic review mechanism.’¹⁵³ The Fund has been established to provide:

- i. ‘funding for the travel of official representatives of developing countries, and in particular the least developed countries, to Geneva to present the national

¹⁴⁷ Human Rights Council, ‘Modalities and Practices for the Universal Periodic Review Process,’ 9 April 2008, HRC/PRST/8/1.

¹⁴⁸ Human Rights Council, ‘Follow-up to President’s Statement 8/1,’ 24 September 2008, HRC/PRST/9/2.

¹⁴⁹ Human Rights Council, ‘Draft Resolution: Establishment of Funds for the Universal Periodic Review Mechanism of the Human Rights Council,’ Submitted by Egypt on behalf of the Group of African States, 27 September 2007, A/HRC/6/L.12/Rev.1.

¹⁵⁰ Human Rights Council, ‘Institution-building of the United Nations Human Rights Council,’ 18 June 2006, A/HRC/5/1, p. 5, para. 27(d).

¹⁵¹ *Ibid*, para. 5, para. 27(c).

¹⁵² Human Rights Council, ‘Report of the Human Rights Council on its Sixth Session,’ 14 April 2008, A/HRC/6/22, paras. 296-297, p. 146.

¹⁵³ Human Rights Council, ‘Establishment of Funds for the Universal Periodic Review Mechanism of the Human Rights Council,’ 28 September 2007, A/HRC/RES/6/17.

report, take part in the ensuing inter-active dialogue and be involved in the adopted of the report in the UPR Working Group sessions during which their country is considered;

- ii. funding for the travel of official representatives of developing countries, and in particular the least developed countries which are members of the Human Rights council and which do not have a permanent mission in Geneva, to act as Rapporteur (i.e. member of the troika);
- iii. training for Member States in the preparation of national reports.¹⁵⁴

Even when States have sufficient resources, funding and disbursements are still available subject to the following criteria:

- a. Travel is given priority over training;
- b. Least developed countries receive priority regarding travel requests to participate in UPR;
- c. Requests regarding roles as a State under review take priority over roles as troikas;
- d. Earlier requests will generally be given priority over later requests.¹⁵⁵

Resolution 6/17 also established the Voluntary Fund for Financial and Technical Assistance for the Implementation of Universal Periodic Review to provide ‘a source of financial and technical assistance to help countries implement recommendations emanating from the universal periodic review in consultation with, and with the consent of, the country concerned.’¹⁵⁶ According to the terms of reference for the Voluntary Trust Fund for Financial and Technical Assistance, the Fund provides assistance for the following purposes:

- a. the integration of the UPR outcomes into United Nations common country programming documents, including the U.N. Development Assistance Framework (UNDAF); and the dissemination of information on UPR outcomes with a view to mobilizing support for the countries concerned;
- b. the coordination of the United Nations, in support of the UPR outcomes, including the conduct of multilateral and bilateral action needs assessments as well as the formulation of programmes and projects aimed at implementing UPR outcomes;

¹⁵⁴ Office of the High Commissioner for Human Rights, ‘Voluntary Fund for Participation in the Universal Periodic Review,’ 2 April 2008, available at: <http://www.ohchr.org/EN/HRBodies/UPR/Documents/NVVoluntaryTrustFundUPR.pdf>

¹⁵⁵ *Ibid.*, III. Funding and Disbursements, paras. a-d.

¹⁵⁶ *Ibid.*

- c. the exchange of information and the sharing of best practices, including through the organization of regional and sub-regional meetings, seminars, consultations and other interactions;
 - d. the development of a national capacity and expertise for the implementation of the UPR outcomes;
 - e. the co-funding of programmes and projects aimed at implementing the UPR outcomes;
 - f. the regular follow up, with national bodies and institutions concerned, of action taken to implement the UPR recommendations.¹⁵⁷
6. Changes to the UPR Process following a Review of the Work and Functioning of the Human Rights Council

The work and functioning of the Human Rights Council is to be reviewed every five years, beginning from when it was first established on 15 March 2006.¹⁵⁸ In accordance with resolution 60/251, Human Rights Council resolution 12/1 mandated an open-ended intergovernmental working group to undertake such reviews,¹⁵⁹ chaired by the President of the Human Rights Council.¹⁶⁰ The Chair of the working group is required to ‘undertake transparent and all-inclusive consultations prior to working group sessions on the modalities of the review, and to keep the Council informed thereof.’¹⁶¹ The working group held sessions in Geneva over two sets of five-day periods from the fourteenth Human Rights Council session¹⁶² and was tasked with reporting its progress and findings to the Council at its seventeenth session.¹⁶³ In order for the working group to carry out its mandate, the Secretary-General of the United Nations provided ‘the working group with all the necessary resources and facilities.’¹⁶⁴ Further to the resolution, the Secretary-General was also responsible for reporting to

¹⁵⁷ Quoted directly from Office of the High Commissioner for Human Rights, ‘Terms of Reference for the Voluntary Fund for Financial and Technical Assistance for the Implementation of the Universal Periodic Review,’ 2009, available at: http://www.ohchr.org/Documents/HRBodies/UPR/TOR_TF_for_TC_assistance_UPR.pdf, para. 6 (a-f), pp. 1-2.

¹⁵⁸ General Assembly, ‘Establishing the Human Rights Council and the Universal Periodic Review,’ 15 March 2006, A/RES/60/251, para. 16.

¹⁵⁹ Human Rights Council, ‘Open-ended Intergovernmental Working Group on the Review of the Work and Functioning of the Human Rights Council,’ 12 October 2009, A/HRC/RES/12/1.

¹⁶⁰ *Ibid.*, para. 3.

¹⁶¹ *Ibid.*, para. 4.

¹⁶² *Ibid.*, para. 2.

¹⁶³ *Ibid.*, para. 6.

¹⁶⁴ *Ibid.*, para. 7.

the Council at its fifteenth session with methods ‘to improve conference and secretariat services for the Council.’¹⁶⁵

In following through with resolution 12/1, the working group submitted the ‘Outcome of the Review and Functioning of the United Nations Human Rights Council’ to the General Assembly for its consideration, which adopted the report.¹⁶⁶ The report sets out several changes to the Universal Periodic Review process, including the periodicity and order of the review,¹⁶⁷ its process and modalities,¹⁶⁸ the outcome of the review,¹⁶⁹ and follow-up.¹⁷⁰

From the second cycle onwards, the review is to take place every four and a half years, rather than every four years,¹⁷¹ but must continue operating within its ‘existing resources and workload.’¹⁷² Each year, 42 States are reviewed, as 14 States are reviewed during each of the 14 sessions over a 3.5 year period.¹⁷³ As for the order of review, the sequence established during the first cycle will be followed in future cycles.¹⁷⁴

In its review of the process and modalities of the review, the working group report recommended that future cycles should ‘focus on, *inter alia*, the implementation of the accepted recommendations and the developments of the human rights situation in the State under review.’¹⁷⁵ The report likewise encourages relevant stakeholders to include information regarding follow-up stemming from the previous review.¹⁷⁶ Another notable change is the inclusion of a separate section in the summary of stakeholder reports prepared by the Office of the High Commissioner for Human Rights for contributions from the national human rights institution, where applicable, whilst continuing to reflect information prepared by other relevant stakeholders.¹⁷⁷

¹⁶⁵ *Ibid*, para. 5.

¹⁶⁶ Human Rights Council, ‘Review of the Works and Functioning of the Human Rights Council,’ 12 April 2011, A/HRC/16/21.

¹⁶⁷ *Ibid*, paras. 2-4.

¹⁶⁸ *Ibid*, paras. 5-14.

¹⁶⁹ *Ibid*, paras. 15-16.

¹⁷⁰ *Ibid*, paras. 17-21.

¹⁷¹ *Ibid*, para. 3.

¹⁷² *Ibid*, para. 11.

¹⁷³ *Ibid*, para. 3.

¹⁷⁴ *Ibid*, para. 4.

¹⁷⁵ *Ibid*, para. 6.

¹⁷⁶ *Ibid*, para. 8.

¹⁷⁷ *Ibid*, para. 9.

The role of the national human rights institution was further strengthened by entitling the Institution to ‘intervene immediately after the State under review during the adoption of the outcome of the review of the Council plenary.’¹⁷⁸

An important component of the working group’s report is strengthening the Universal Periodic Review Voluntary Trust Fund to foster participation among developing countries, especially those that are least developed.¹⁷⁹ However, the report does not specify what precise steps will be taken to strengthen the Fund and ensure that States in most need of assistance receive it. The working group further recommends that a Board of Trustees be established, but does not detail the role that the board is to assume.

It was also decided that recommendations within the outcome of the review be thematically clustered in consultation with and consent of the recommending States and State under review.¹⁸⁰ In response to a number of States that failed to provide clear responses to recommendations received during the first cycle of review, the working group suggested that in future cycles, States under review must provide a clear response (preferably in writing) to the recommendations received before the Council plenary session.¹⁸¹

Whilst the working group encourages States to issue mid-term reports regarding steps taken towards following-up on accepted recommendations,¹⁸² such reporting receives no mention in the working group report and remains voluntary. Mandatory mid-term reporting would require States to set concrete benchmarks for achieving outcomes in practice and develop plans of action early on in the review cycle. Compulsory mid-term reporting would also enhance transparency regarding the implementation of

¹⁷⁸ *Ibid*, para. 13.

¹⁷⁹ Human Rights Council, ‘Review of the Works and Functioning of the Human Rights Council,’ 12 April 2011, A/HRC/16/21, paras. 14 and 19.

¹⁸⁰ *Ibid*, para. 15.

¹⁸¹ *Ibid*, para. 16. Human Rights Council, ‘Institution-building of the United Nations Human Rights Council,’ 18 June 2006, A/HRC/5/1, paras. 27 and 32 of the annex. Rachel Brett, ‘A Curate’s Egg. United Nations Human Rights Council: Year 3. 19 June 2008 to 18 June 2009,’ 13 *Human Rights and Refugees Publications*, 4, August 2009, p. 9, available at: www.quno.org/geneva/pdf/humanrights/ACuratesEgg200908.pdf

¹⁸² Human Rights Council, ‘Review of the Works and Functioning of the Human Rights Council,’ 12 April 2011, A/HRC/16/21, para. 19.

accepted recommendations and provide recommending States and relevant stakeholders with a reference point for following-up on outstanding commitments.

Finally, the working group recommends changes regarding the follow-up stage of the Universal Periodic Review process. Unfortunately, components of the working group report regarding follow-up do not vary greatly from the provisions already established in Human Rights Council resolution 5/1 regarding institution building of the Human Rights Council.

The working group report likewise includes reforms to special procedures and administration of the Human Rights Council. National human rights institutions are now permitted to ‘nominate candidates as special procedures mandate holders.’¹⁸³ Successful candidates are required to ‘formulate their recommendations in a concrete, comprehensive and action-oriented way and pay attention to the technical assistance and capacity-building needs of States in their thematic and country mission reports,’¹⁸⁴ along with an addendum including commentary of the State concerned. In this regard, the Council must ‘remain as a forum for open, constructive and transparent discussion on cooperation between States and special procedures, allowing for the identification and exchange of good practices and lessons learned.’¹⁸⁵

Another aspect of the working group report addressed reprisals against individuals and groups who/that cooperated with the United Nations and, by extension, participated in the Universal Periodic Review process¹⁸⁶ in response to reports that such reprisals took place in Algeria,¹⁸⁷ Bahrain,¹⁸⁸ Belarus,¹⁸⁹ China,¹⁹⁰ Columbia,¹⁹¹ Iran,¹⁹²

¹⁸³ *Ibid*, para. 22(a).

¹⁸⁴ *Ibid*, para. 25.

¹⁸⁵ *Ibid*, para. 27.

¹⁸⁶ *Ibid*, para. 30.

¹⁸⁷ General Assembly, ‘Cooperation with the United Nations, Its Representatives and Mechanisms in the Field of Human Rights,’ 13 August 2012, A/HRC/21/18, p. 6, paras. 16-17.

¹⁸⁸ *Ibid*, paras. 18-21.

¹⁸⁹ *Ibid*, p. 7, paras. 22-23.

¹⁹⁰ *Ibid*, para. 24.

¹⁹¹ *Ibid*, pp. 7-8, para. 25-27.

¹⁹² *Ibid*, para. 28.

Kazakhstan,¹⁹³ Lebanon,¹⁹⁴ Malawi,¹⁹⁵ Saudi Arabia,¹⁹⁶ Sri Lanka,¹⁹⁷ and Sudan.¹⁹⁸ The Council ‘strongly rejects any act of intimidation or reprisal against individuals and groups who cooperate or have cooperated with the United Nations, its representatives and mechanisms in the field of human rights, and urges States to prevent and ensure adequate protection against such acts,’¹⁹⁹ in line with a principle on which Universal Periodic Review is based to ‘ensure the participation of all relevant stakeholders.’²⁰⁰

The Human Rights Council later adopted resolution 17/119 following-up from resolution 16/21, which provided further clarification on a number of reforms, including:

- I. Order of the review in the Working Group on the Universal Periodic Review
- II. General Guidelines for the Preparation of Information under the Universal Periodic Review
- III. Duration of the review in the Working Group on the Universal Periodic Review
- IV. List of Speakers in the Working Group on the Universal Periodic Review
- V. Voluntary Funds

The first reform includes the order of review for the second cycle onwards, which further specifies that ‘14 States shall be reviewed during each session of the Working Group.’²⁰¹

The second category of reform establishes a narrower focus for States under review during future cycles of review based on the following guidelines:

- a. A description regarding the broad consultation process States under review must conduct before preparing documentation to be submitted in advance of the interactive dialogue

¹⁹³ *Ibid*, paras. 29-30.

¹⁹⁴ *Ibid*, p. 9, paras. 31-32.

¹⁹⁵ *Ibid*, paras. 33-34.

¹⁹⁶ *Ibid*, pp. 9-10, paras. 35-37.

¹⁹⁷ *Ibid*, pp. 10-12, paras. 39-46.

¹⁹⁸ *Ibid*, pp. 12-13, paras. 47-50.

¹⁹⁹ *Ibid*.

²⁰⁰ Human Rights Council, ‘Institution-building of the United Nations Human Rights Council,’ 18 June 2006, A/HRC/5/1, p. 2, para. 3(m).

²⁰¹ Human Rights Council, ‘Follow-up to the Human Rights Council Resolution 16/21 with regard to the Universal Periodic Review,’ 17 June 2011, A/HRC/17/119, para. 1.

- b. Developments and progress following the previous review centring on the institutional and normative framework adopted by the State under review, including ‘constitution, legislation, policy measures, national jurisprudence, [and] human rights infrastructure, including national human rights institutions and scope of international obligations identified in the ‘basis of review’ in the annex of resolution 5/1’
- c. Implementation of accepted recommendations, voluntary commitments and other international human rights obligations, including ‘cooperation with human rights mechanisms’
- d. Follow-up by the State under review as part of its presentation during the interactive dialogue
- e. ‘Identification of achievements, best practices, challenges and constraints in relation to the implementation of accepted recommendations and development human rights situations in the State’
- f. Addressing ‘key national priorities, initiatives and commitments’ undertaken by the State under review
- g. Intentions of the State, if applicable, to request capacity-building and technical assistance and whether such support was received²⁰²

Part III of Human Rights Council resolution 17/119 regarding the duration of the review further extends the interactive dialogue from three hours to three and a half hours. The length of time provided to States under review is likewise extended to 70 minutes for their ‘initial presentation, replies and concluding comments in line with PRST/8/1.’²⁰³ A major logistical issue encountered during the first cycle of review was the inequity of the ‘first come first served’ queuing process for States to make statements during the interactive dialogue used to draw up a list of speakers. The resolution adopts a new process, requiring States to register at the Palais des Nations from the Monday before the review until Thursday of the same week in order to be placed on the list of speakers.²⁰⁴ At the beginning of each new cycle, the President will draw the first speaker by lot; subsequent speakers will take the floor in alphabetical order from the first letter of the State under review.²⁰⁵ Speakers can, however, switch places on the speakers list if both States agree.²⁰⁶

²⁰² *Ibid.*, para. 2.

²⁰³ *Ibid.*, paras. 3-4.

²⁰⁴ *Ibid.*, para. 8(a).

²⁰⁵ *Ibid.*, para. 8(b).

²⁰⁶ *Ibid.*, para. 8(d).

Provided all of the Member and Observer States on the speakers list can be accommodated within a three and a half hour period, Member States can take the floor for three minutes, whereas Observer States are limited to two minutes.²⁰⁷ If not all of the speakers can be accommodated within the speaking time provided, the speaking time for Member States will be reduced to 2 minutes.²⁰⁸ In cases where reducing the speaking time for Member States to two minutes is still insufficient to accommodate all speakers, the overall speaking time (3.5 hours) will be divided equally among the total number of speakers.²⁰⁹ Speakers are encouraged to convey the most important component of their statements at the beginning of their speaking time, as time limits are strictly enforced.²¹⁰

Human Rights Council resolution 17/119 provides further clarification regarding the methods used to strengthen the provision of the Voluntary Fund for Participation in the Universal Periodic Review and Voluntary Fund for Financial and Technical Assistance in the Implementation of the Universal Periodic Review. In line with this resolution, The Secretariat has submitted annual reports regarding ‘the operations of the funds and the resources available to it’ from the 18th session of the Human Rights Council onwards, which provide information regarding the financial situation of the Fund, the activities undertaken by recipients, and statements of income and expenditure.²¹¹

Understanding the legal basis for the establishment of the Universal Periodic Review process is a prerequisite to evaluating the strengths and weaknesses of the process in practice. The criteria used to hold States under review to account; the principles, objectives and outcomes that guide the review; and the general guidelines, modalities and practices of the review establish benchmarks against which the success of the process will be measured from the first cycle onwards. As will be discussed further in later chapters, measuring the principles and objectives of the review against its outcomes can reveal whether the review meets its intended purpose and where reform is necessary. Evidence of this can be found in the restrained reforms adopted by the

²⁰⁷ *Ibid*, para. 5.

²⁰⁸ *Ibid*, para. 6.

²⁰⁹ *Ibid*, para. 7.

²¹⁰ *Ibid*, para. 8(c).

²¹¹ *Ibid*, paras. 9-10.

open-ended intergovernmental working group in its report on the ‘Outcome of the Review of the Work and Functioning of the United Nations Human Rights Council.’²¹²

Continuing with ‘Part I: An Overview of Universal Periodic Review,’ the following chapter explains the role of relevant stakeholders in the Universal Periodic Review process.

²¹² Human Rights Council, ‘Review of the Work and Functioning of the Human Rights Council,’ 12 April 2011, A/HRC/RES/16/21.

Chapter 3

Principal Actors in the Universal Periodic Review Process

As per Human Rights Council resolution 5/1, the primary stakeholders in the Universal Periodic Review process are the State under review, the Human Rights Council, the United Nations Working Group, three rapporteurs (the ‘Troikas’), United Nations Member States and Observer States, non-governmental organisations, national human rights institutions, human rights advocates, defenders and experts, and research and academic institutions. The Office of the High Commissioner for Human Rights, human rights treaty bodies, special rapporteurs and other United Nations human rights experts are other important actors that can influence the review process.²¹³ This chapter identifies primary actors in the Universal Periodic Review process and explains their functions.

1. State under Review

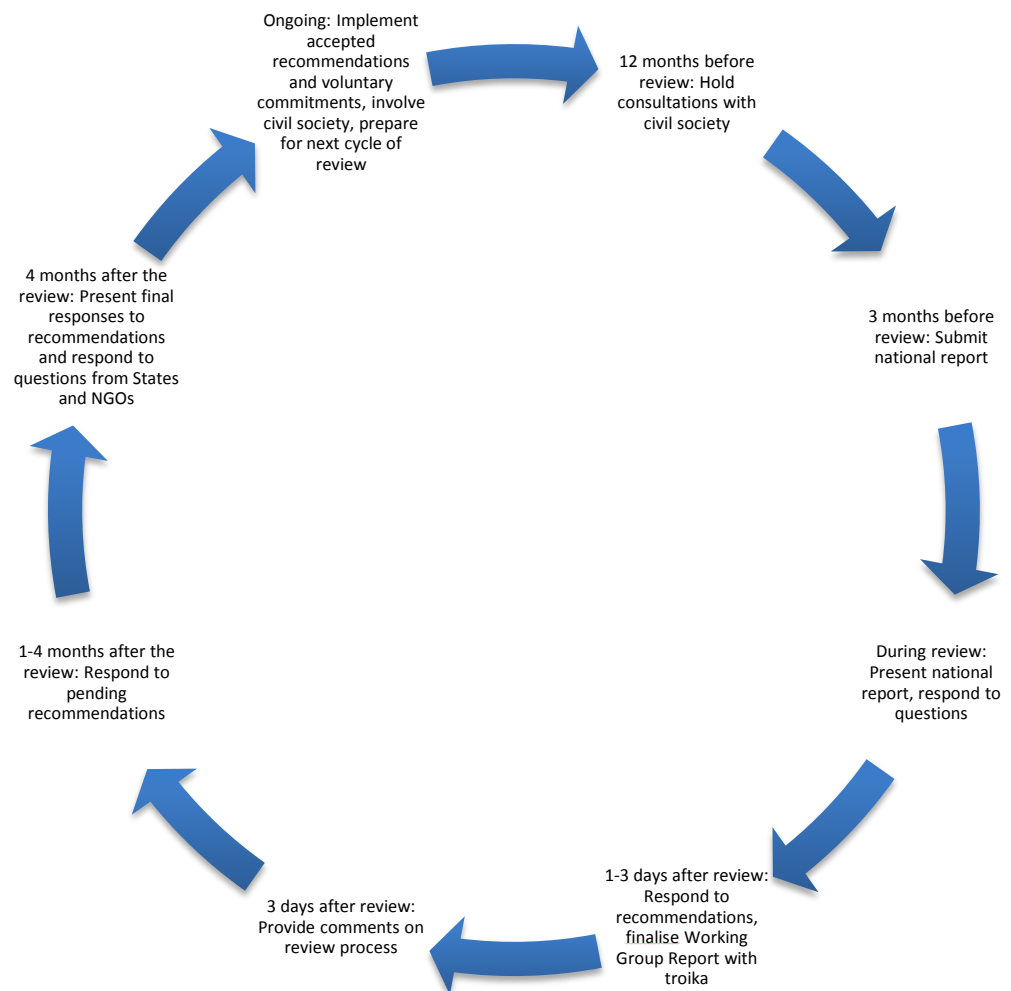
One of the principles of Universal Periodic Review is that it should ‘fully involve the country under review.’²¹⁴ Each of the 193 United Nations Member States is subject to a review of its human rights record under Universal Periodic Review based on the Charter of the United Nations, Universal Declaration of Human Rights, international human rights law and applicable international humanitarian law. Between six to twelve weeks prior to the review, the State concerned must submit a national report based on consultations between government and civil society and other relevant stakeholders, which should ideally take place 10-12 months before the date of the review. Consultations should be broad and accessible and take place in an open, transparent and participatory environment.

The following diagram illustrates the cycle of review from the perspective of the State under review:

²¹³ Human Rights Council, ‘Institution-building of the United Nations Human Rights Council,’ 18 June 2006, A/HRC/5/1, pp. 2-3, paras. 3-4.

²¹⁴ *Ibid*, p. 2, para. 3(e).

Figure 1 The Role of the State during Universal Periodic Review



Although the length of national reports is limited to 20 pages, States are able to supplement their national report with information submitted in the form of an appendix. The national report should be available in all of the major languages in the State under review and contain information regarding:

- a. consultations with civil society and relevant stakeholders;
- b. the normative framework, including laws, policies and programmes related to human rights;
- c. the institutional human rights framework;
- d. cooperation with domestic, regional and international human rights mechanisms;
- e. coordination with relevant stakeholders, non-governmental organisations, and the national human rights institution;
- f. strengths as examples of best practices;
- g. barriers to meeting human rights obligations;
- h. State priorities towards improving the situation of human rights at the ground level;
- i. whether there is a need to enhance capacity-building or technical assistance; and,
- j. the status of implemented recommendations from the second cycle onwards.²¹⁵

The State under review has discretion over accepting recommendations made by Member and Observer States and can choose to make voluntary commitments or pledges to improve the human rights situation in its country.²¹⁶ As per Presidential Statement 8/1, 'The State under review is sovereign in addressing the questions and/or issues it chooses to answer of those transmitted to it by the troika members or raised during the proceedings of the Working Group.'²¹⁷ When a United Nations Member or Observer State makes a recommendation to the State under review, the State concerned has discretion to accept or reject the recommendation. After accepting a recommendation or making a voluntary commitment, States are encouraged to implement it into domestic laws and policies, monitor subsequent improvements and

²¹⁵ Lis Dhundale, 'The Role of Civil Society, *Universal Periodic Review First Cycle: Reporting Methodologies from the Positions of the State, Civil Society and National Human Rights Institutions*. The Danish Institute for Human Rights, p. 28

²¹⁶ Human Rights Council, 'Modalities and Practices for the Universal Periodic Review Process,' 9 April 2008, HRC/PRST/8/1.

²¹⁷ *Ibid.*

challenges, and account for that commitment during the next cycle of review. It is important to track recommendations that the State concerned has accepted and rejected. If a State chooses to reject a recommendation during the current cycle of review, the same recommendations can be made again during the next cycle, whereas monitoring accepted recommendations will assist with following-up on the outcome of the review.

During the first cycle of review, States also issued general responses or provided an unclear position as to whether a given recommendation has been accepted. In such cases, the recommendation was recorded as pending, which renders statistics on Universal Periodic Review less reliable. However, from the second cycle onwards, States are required to provide a clear response to recommendations, indicating whether each recommendation has been accepted or rejected.²¹⁸

Between the current cycle and the next, each State under review is encouraged to 'prepare a comprehensive national action plan and/or a strategy, policy papers, reform programmes etc. based on the Universal Periodic Review recommendations.'²¹⁹ Although the preparation of such reports remains within the discretion of States under review, a number of States have prepared national plans of action and mid-term implementation reports since the first cycle of review, further clarifying the outcome of the review and steps towards its realisation. Nepal's national plan of action, for instance, is produced in chart-form, detailing the recommendation posed and conclusions reached, activities taken towards implementation, responsible and assisting bodies, expected time frame and result indicators.²²⁰ Following these examples of best practice, Botswana²²¹ has committed to develop national action plans that have yet to be released at the time of writing. Other States, such as Australia²²²

²¹⁸ Human Rights Council, 'Review of the Work and Functioning of the Human Rights Council,' 12 April 2011, A/HRC/16/21, para.16; Human Rights Council, 'Institution-building of the United Nations Human Rights Council,' 18 June 2006, A/HRC/5/1.

²¹⁹ Lisbeth Arne Nordager Thonbo, 'Introduction,' *Universal Periodic Review First Cycle: Reporting Methodologies from the Positions of the State, Civil Society and National Human Rights Institutions*. The Danish Institute for Human Rights, p. 20.

²²⁰ Nepal, 'Action Plan on Implementation of UPR Recommendations,' available at: http://www.ncf.org.np/upload/files/417_en_Action_plan_UPR.pdf

²²¹ Republic of Botswana, 'Update Press Statement about the Comprehensive Human Rights Strategy and National Action Plan on 23 January 2013,' available at: <http://www.gov.bw/en/News/Human-Rights-Strategy-and-National-Action-Plan/>

²²² Australian Government, Department of the Attorney General, 'Australia's National Action Plan: 2012,' available at: <http://www.ag.gov.au/Consultations/Pages/NationalHumanRightsActionPlan.aspx>

developed a general human rights action plan that ‘reaffirms the government’s commitment to existing social policy initiatives and highlights new priority areas’ and baseline study that ‘provides a summary of human rights issues in Australia and existing measures to address them’,²²³ which could be modified to account for accepted recommendations and voluntary commitments arising from the review process.

During its first review, Uganda voluntarily pledged to develop a National Action Plan ‘as part of a follow-up mechanism on issues raised in the review and recommendations’²²⁴ and committed ‘to establish a focal point within the Ministry of Foreign Affairs to provide coordination with stakeholders and the international community.’²²⁵ States can choose to appoint a National Focal Point to coordinate the State’s duties to disseminate information to the public on Universal Periodic Review, consult with civil society, track accepted recommendations and follow-up on implementation of those recommendations. The concerned State’s national human rights institution can act as a National Focal Point, as it is a non-judicial body funded by yet independent of government, and ‘link and facilitator between the State and relevant stakeholders.’²²⁶ The national human rights institution can also contribute towards the Universal Periodic Review process through:

- a. disseminating information on the Universal Periodic Review of the State concerned;
- b. engaging civil society in the review process;
- c. consulting with civil society and preparing a stakeholder report;
- d. advising other stakeholders on how to submit a reports;
- e. assisting the State with the consultation process;
- f. attending the review in Geneva;

²²³ Lisbeth Arne Nordager Thonbo, ‘Introduction, *‘Universal Periodic Review First Cycle: Reporting Methodologies from the Positions of the State, Civil Society and National Human Rights Institutions.* The Danish Institute for Human Rights, p. 20. The Danish Institute for Human Rights, ‘Universal Periodic Review First Cycle: Reporting Methodologies from the Positions of the State, Civil Society and National Human Rights Institutions,’ November 2010, Copenhagen, Denmark, p. 13.

²²⁴ Human Rights Council, ‘Report of the Working Group on the Universal Periodic Review: Uganda,’ 22 December 2011, A/HRC/19/16, p. 6, para. 27.

²²⁵ *Ibid*, p. 25, para. 115.

²²⁶ Lisbeth Arne Nordager Thonbo, ‘Introduction, *‘Universal Periodic Review First Cycle: Reporting Methodologies from the Positions of the State, Civil Society and National Human Rights Institutions,* p. 16.

- g. following up on voluntary commitments and accepted recommendations and supporting the implementation process; and
- h. scrutinising rejected recommendations.²²⁷

The Principles relating to the Status of National Institutions (The Paris Principles) already bestow national human rights institutions with responsibility over areas that overlap with Universal Periodic Review, such as:

- a. examining laws and policies to ‘ensure that these provisions conform to the fundamental principles of human rights rights...[and] if necessary, recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures;’
- b. reviewing human rights violations;
- c. preparing reports regarding the human rights situation in the State concerned and making recommendations for improvement;
- d. ensuring that domestic laws, policies and programmes are congruent with international human rights obligations;
- e. encouraging ratification of outstanding international human rights instruments;
- f. submitting information to supplement national reports submitted to regional and international bodies;
- g. cooperating with United Nations human rights monitoring mechanisms;
- h. assisting with developing training programmes and conducting research into human rights issues; and,
- i. publicising human rights to create public awareness.²²⁸

2. Working Group

The Universal Periodic Review Working Group oversees State reviews that take place over a 3.5 hour interactive dialogue between the State concerned and Member States and Observer States, allowing the State under review 70 minutes of speaking time, leaving 140 minutes for Member and Observer States to pose questions, comment and make recommendations. The Working Group prepares a report ‘summarizing the review process including questions raised, discussion points, comments, and views

²²⁷ Lis Dhundale, ‘The Role of Civil Society, *Universal Periodic Review First Cycle: Reporting Methodologies from the Positions of the State, Civil Society and National Human Rights Institutions*. The Danish Institute for Human Rights, quoted directly from p. 39.

²²⁸ General Assembly, Principles relating to the Status of National Institutions (The Paris Principles), 20 December 1993, GA/48/134.

expressed by the reviewed State delegation.’²²⁹ The outcome report includes information from the Working Group report and ‘lists the entire set of recommendations which the State under review will consider for adoption, further considerations or rejection.’²³⁰ The Human Rights Council adopts outcome reports during its plenary session within four to six months following the interactive dialogue.²³¹ The President of the Human Rights Council chairs the Working Group, which is comprised of 47 members of the Council. The Working Group reviews 14 States during each session and holds 14 sessions per 4.5 year cycle.²³² The role of the Working Group during Universal Periodic Review is illustrated below.

²²⁹ Lisbeth Arne Nordager Thonbo, ‘Introduction,’ *Universal Periodic Review First Cycle: Reporting Methodologies from the Positions of the State, Civil Society and National Human Rights Institutions*. The Danish Institute for Human Rights, p. 19.

²³⁰ *Ibid.*

²³¹ *Ibid.*

²³² Human Rights Council, ‘Review of the Works and Functioning of the Human Rights Council,’ 12 April 2011, A/HRC/16/21, para. 3.

Figure 2 Role of the Working Group during UPR



2. Troikas

A new group of three troikas/rapporteurs, drawn by lot from among members of the Human Rights Council, facilitates each review with assistance from the Office of the High Commissioner for Human Rights.²³³ Member and Observer States are able to submit questions and recommendations to the troika in advance of the review. The troika is authorised to ‘cluster the questions and/or issues in accordance with the content and structure of the report prepared by the State under review.’²³⁴ The troika then provides the Office of the High Commissioner for Human Rights with questions and recommendations that Member and Observer States provide in advance of review.²³⁵ The Secretariat transmits these questions, comments and recommendations to the State under review at least ten days in advance of the interactive dialogue.²³⁶ Once transmitted to the State under review, the troika circulates the questions, comments and recommendations to all Member and Observer States.²³⁷ The troika also works with the State under review and the Office of the High Commissioner for Human Rights to prepare the Universal Periodic Review Working Group report, which includes a summary of the proceedings of the review and a list of recommendations.²³⁸

3. Member and Observer States

As per the modalities of the review set out in Human Rights Council resolution 5/1 ‘The review will be conducted in one working group, chaired by the President of the Council and composed of the 47 member States of the Council...[and] Observer States

²³³ Informal Information Note prepared by the Department of Foreign Affairs, Universal Periodic Review Mechanism of the United Nations Human Rights Council, Information for Ireland’s Review on 6 October 2011.

²³⁴ Human Rights Council, ‘Modalities and Practices for the Universal Periodic Review Process,’ 9 April 2008, HRC/PRST/8/1, para. 3.

²³⁵ According to paragraph 1 of Human Rights Council resolution HRC/PRST//8/1, the ‘questions and/or issues should conform to the basis of the review, as identified by the Human Rights Council in paragraph 1 of the annex to its resolution 5/1 on institution-building of the Council and shall be raised in a manner that is consistent with the principles and objectives of the universal periodic review, as stated in resolution 5/1 and be based mainly on the three universal periodic review documents.’

²³⁶ *Ibid*, para. 2. Office of the High Commissioner for Human Rights, ‘Working with the United Nations Human Rights Programme: A Handbook for Civil Society,’ 2008, available at: www.ohchr.org/EN/AboutUs/CivilSociety/Documents/Handbook_en.pdf

²³⁷ Human Rights Council, ‘Modalities and Practices for the Universal Periodic Review Process,’ 9 April 2008, HRC/PRST/8/1, para. 4.

²³⁸ Informal Information Note prepared by the Department of Foreign Affairs, Universal Periodic Review Mechanism of the United Nations Human Rights Council, Information for Ireland’s Review on 6 October 2011.

may participate in the review, including in the interactive dialogue.’²³⁹ To be clear, in the context of Universal Periodic Review, the term ‘Observer States’ refers to the 146 States that are not members of the Human Rights Council, rather than to Permanent Observer States to the United Nations. Member and Observer States participate in the interactive dialogue by posing questions, making recommendations and commenting on the human rights situation in the State under review. Recommendations should ‘be precise and practical, constructive and forward looking in order to be as useful as possible for improving implementation on the ground.’²⁴⁰

Comments, questions and recommendations made by Member and Observer States can draw from information contained within the concerned States’ national report and two reports prepared by the Office of the High Commissioner for Human Rights. One report provides a summary of stakeholder reports and the other a compilation of United Nations documentation.

During the interactive dialogue phase of review, Member and Observer States are able to make individual or joint statements for three-minute and two-minute time intervals, respectively.²⁴¹ When there are more speakers than speaking time allows for within a 3.5 hour period, the speaking time for Member States is reduced to two minutes in order to accommodate all speakers.²⁴² Speaking times are to be strictly enforced.²⁴³ As such, States are encouraged to discuss their most salient points at the beginning of their statements.²⁴⁴ States can reserve speaking time at a registration desk in the Palais des Nations (in Geneva) from Monday at 10 am to Thursday at 6 pm in the week preceding a given review.²⁴⁵ States that have reserved speaking time are arranged in alphabetical order,²⁴⁶ but are able to switch speaking times with other States; however, the first speaker is drawn by lot.²⁴⁷

²³⁹ Human Rights Council, ‘Institution-building of the United Nations Human Rights Council,’ 18 June 2006, A/HRC/5/1, para. 18(a-b).

²⁴⁰ Lis Dhundale, ‘The Role of Civil Society,’ *Universal Periodic Review First Cycle: Reporting Methodologies from the Positions of the State, Civil Society and National Human Rights Institutions*. The Danish Institute for Human Rights, p. 32.

²⁴¹ Human Rights Council, ‘Follow-up to the Human Rights Council Resolution 16/21 with regard to Universal Periodic Review,’ 19 July 2011, A/HRC/DEC/17/119, para. 5, p. 2.

²⁴² *Ibid.*, para. 6, p. 2.

²⁴³ *Ibid.*, para. 8(c), p. 3.

²⁴⁴ *Ibid.*

²⁴⁵ *Ibid.*, para. 8(a), p. 2.

²⁴⁶ *Ibid.*, para. 8(b), p. 2.

²⁴⁷ *Ibid.*, para. 8(d), p. 3.

4. Civil Society and Relevant Stakeholders

Resolution 5/1 provides a role for civil society actors in the Universal Periodic Review process, which includes national human rights institutions, non-governmental organisations, academic institutions, trade unions, human rights defenders and other relevant stakeholders. ‘The Universal Periodic Review process in the UN Human Rights Council offers new high-profile opportunities for nongovernmental advocacy to improve the observance of human rights.’²⁴⁸ Relevant stakeholders are welcome to disseminate information²⁴⁹ explaining the Universal Periodic Review process, how to become involved, and details regarding upcoming consultations.

Before consultations take place, stakeholders (individually or jointly) can work towards disseminating information in the form of booklets, posters, PowerPoint slideshows, articles, press releases, television and radio programmes, and other means to the public explaining the purpose of Universal Periodic Review and the national consultation process, and how civil society can participate.²⁵⁰ Information provided to the public in advance of consultations should outline the General Guidelines adopted by the Human Rights Council and explain how stakeholders can participate in the Universal Periodic Review process.²⁵¹ Stakeholders could pool resources to coordinate and organise broad and accessible consultations.

States are encouraged to hold national consultations with relevant stakeholders, including civil society, national human rights institutions, non-governmental organisations, research centres and human rights experts, defenders and academics.²⁵² Some States have chosen to involve stakeholders in drafting the national report by releasing an early draft for discussion during the consultation process. Other States hold consultations in advance of drafting a national report. In the latter case, further

²⁴⁸ Lawrence Moss, ‘Opportunities for Nongovernmental Organisation Advocacy in the Universal Periodic Review Process at the UN Human Rights Council,’ (2010) 2 *Journal of Human Rights Practice* 2, abstract.

²⁴⁹ Laurie S. Wiseberg, ‘The Role of Non-Governmental Organizations (NGOs) in the Protection and Enforcement of Human Rights,’ in Symonides, Janusz (ed), *Human Rights: International Protection, Monitoring, Enforcement*, (Ashgate, Warsaw 2003), p. 355.

²⁵⁰ Lis Dhundale, ‘The Role of Civil Society,’ *Universal Periodic Review First Cycle: Reporting Methodologies from the Positions of the State, Civil Society and National Human Rights Institutions*. The Danish Institute for Human Rights, p. 26.

²⁵¹ *Ibid.*

²⁵² Human Rights Council, ‘Institution-building of the United Nations Human Rights Council,’ 18 June 2006, A/HRC/5/1.

consultations (likely on a smaller-scale) can take place after the national report has been drafted. Either way, national consultations provide an opportunity for stakeholders to ensure the national report ‘reflects 1) a real and comprehensive picture of the actual human rights situation in the country, 2) the efforts made by the State to progressively improve it and 3) that the proposed recommendations to improve the situation are important, relevant and substantial.’²⁵³ Stakeholders can also use the national report and outcome document as a means to monitor, measure and follow-up on voluntary commitments and accepted recommendations.

Aside from participating in public consultations, stakeholders can submit a five-page report, or a ten-page report if part of a coalition, to the Office of the High Commissioner for Human Rights regarding the human rights record of the State under review, outlining key human rights issues in the State concerned. The report can also identify best practices, achievements, constraints and challenges regarding implementation of human rights obligations and voluntary commitments over the previous four and a half years. The stakeholder report should include questions and concrete recommendations on no more than six issues based on the human rights situation in the State under review. Stakeholder reports can highlight national priorities, initiatives and commitments, and underscore the need for capacity-building and technical assistance, when necessary. Information in the report should be accurate and current; it can draw from information contained in legal cases, reliable statistics, laws and policies, academic research and reports prepared by non-governmental institutions and national human rights institutions. The stakeholder report can also follow up on ‘previous recommendations made by the United Nations Treaty Bodies and Special Procedures; and [integrate] key practical recommendations with explicit references to the United Nations Treaty Bodies and Special Procedures recommendations.’²⁵⁴ The aim of stakeholder reports is to have recommendations from issues raised in the report included in the Secretariat’s compilation of reports submitted by stakeholders. The Office of the High Commissioner for Human Rights compiles the reports it receives for relevant stakeholders into a single ten-page

²⁵³ Lis Dhundale, ‘The Role of Civil Society, *Universal Periodic Review First Cycle: Reporting Methodologies from the Positions of the State, Civil Society and National Human Rights Institutions*. The Danish Institute for Human Rights, p. 31.

²⁵⁴ International Human Rights Federation, ‘The Universal Periodic Review Handbook,’ available at: www.fidh.org/IMG/pdf/UPR_HANDBOOK.pdf, p. 3.

report.²⁵⁵ Original stakeholder reports remain available to the public on the Office of the High Commissioner for Human Rights website.

Once accredited by the Economic and Social Council, stakeholders can also speak at the plenary session before the Human Rights Council adopts the outcome document.²⁵⁶ However, in order to gain a voice in the Universal Periodic Review process before this point, stakeholders must successfully lobby recommending States to raise issues, concerns and recommendations on their behalf. States with ECOSOC status can organise side events during sessions of the Human Rights Council, creating a forum during which such lobbying can take place.

Stakeholders can assume an equally meaningful role by monitoring²⁵⁷ State implementation of recommendations²⁵⁸ and voluntary commitments stemming from the review process and following-up with concerned States when implementation is lacking. Figure 3 provides a timeline for stakeholder involvement in the review process.

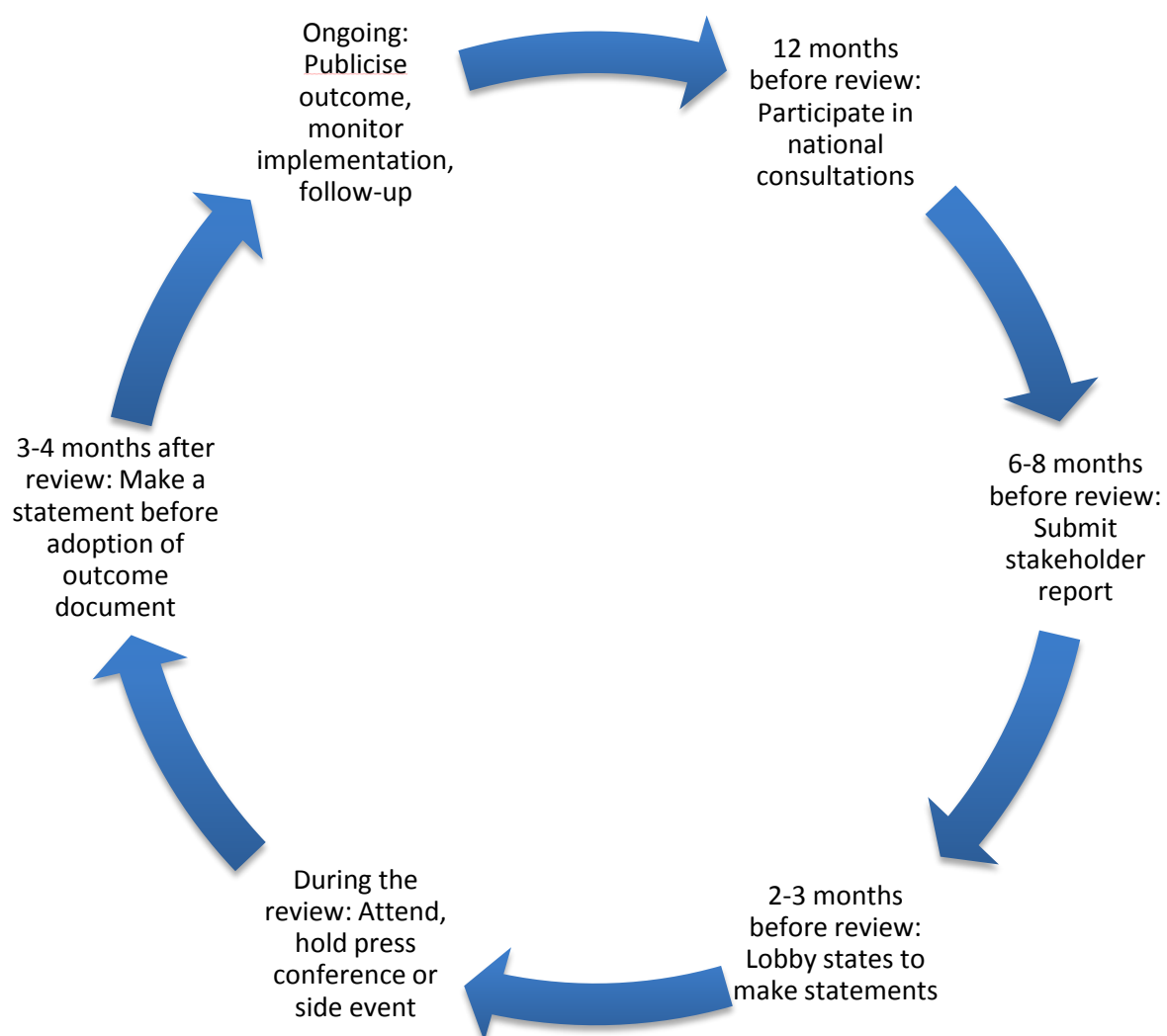
²⁵⁵ Office of the High Commissioner for Human Rights, 'Working with the United Nations Human Rights Programme: A Handbook for Civil Society,' 2008, available at: www.ohchr.org/EN/AboutUs/CivilSociety/Documents/Handbook_en.pdf.

²⁵⁶ Further information on how stakeholders can apply for ECOSOC accreditation is available at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/NgosNhris.aspx>. Office of the High Commissioner for Human Rights, 'Working with the United Nations Human Rights Programme: A Handbook for Civil Society,' 2008, available at: www.ohchr.org/EN/AboutUs/CivilSociety/Documents/Handbook_en.pdf

²⁵⁷ Laurie S. Wiseberg, 'The Role of Non-Governmental Organizations (NGOs) in the Protection and Enforcement of Human Rights,' in Symonides, Janusz (ed), *Human Rights: International Protection, Monitoring, Enforcement*, (Ashgate, Warsaw 2003), pp. 358-359.

²⁵⁸ Philip Alston and James Crawford (eds), *The Future of Human Rights Monitoring* (Cambridge University Press, Cambridge 2000); Wiseberg, Laurie S., 'The Role of Non-Governmental Organizations (NGOs) in the Protection and Enforcement of Human Rights,' in Symonides, Janusz (ed), *Human Rights: International Protection, Monitoring, Enforcement*, (Ashgate, Warsaw 2003).

Figure 3 The Role of Stakeholders during UPR



5. Human Rights Council

The General Assembly elects forty-seven government representatives from among the 193 United Nations Member States to serve on the Human Rights Council.²⁵⁹ The Council ensures Member States meet their obligations under international human rights law by addressing human rights violations and making recommendations aimed to prevent those violations from recurring.

The Human Rights Council holds three regular sessions annually, which provide opportunities to follow up on the implementation of voluntary commitments and accepted recommendations stemming from previous cycles of review. The Human Rights Council sessions are also a forum to identify challenges and best practices regarding the human rights situation in each State under review between cycles. During Human Rights Council sessions, the concerned State issues statements that will supplement and clarify information regarding accepted, pending and rejected recommendations, whilst providing ‘relevant indicators for follow-up’²⁶⁰ concerning the implementation of accepted recommendations and voluntary commitments stemming from Universal Periodic Review as per standing item 6 of the agenda.²⁶¹

The Human Rights Council adopts the outcome document after the State concerned addresses the issues raised and responds to recommendations (20 minutes); Member and Observer States comment on the outcome of the review (20 minutes); and relevant stakeholders comment on issues covered during the review (20 minutes). This is the only stage of Universal Periodic Review when relevant stakeholders, other than the State concerned and Member and Observer States, have the opportunity to comment during the Universal Periodic Review process. Once the Human Rights Council adopts

²⁵⁹ Informal Information Note prepared by the Department of Foreign Affairs, ‘Universal Periodic Review Mechanism of the United Nations Human Rights Council,’ Information for Ireland’s Review, 6 October 2011. ‘Until the establishment of the Human Rights Council (HRC) in 2006, monitoring of compliance with human rights obligations was limited to monitoring individual human rights conventions separately in accordance with the requirements stipulated in the respective conventions.’ Lisbeth Arne Nordager Thonbo, ‘Universal Periodic Review First Cycle: Reporting Methodologies from the Positions of the State, Civil Society and National Human Rights Institutions.’ The Danish Institute for Human Rights, p. 8.

²⁶⁰ Franciscans International, ‘Universal Periodic Review Follow-Up Strategy: Practical Advocacy Initiatives,’ available at: www.upr-info.org/IMG/pdf/UPR_Follow-up_Strategy.pdf, p. 2.

²⁶¹ Human Rights Council, ‘Institution-building of the United Nations Human Rights Council,’ 18 June 2006, A/HRC/5/1, p. 5, para. 35.

the outcome report, the State that has been reviewed is required to implement its voluntary commitments and accepted recommendations.

6. Office of the High Commissioner for Human Rights

The Office of the High Commissioner for Human Rights draws from reports submitted by treaty bodies, special procedures and UN documentation to submit a report on the human rights record of each country under review. The Office prepares another summary report based on information submitted by stakeholders, such as non-governmental organisations, national human rights institutions, on the human rights situation in the State concerned.

The Office of the High Commissioner for Human Rights is also tasked with following-up on and supporting the implementation of all human rights mechanisms, including commitments made by States under review during the review process. It accomplishes this task, in part, through organising meetings with reviewed States, national human rights institutions, civil society and UN country teams to outline comprehensive strategies, support State implementation of recommendations, and share best practices on implementation and follow-up processes.

7. Special Procedures

The Special Procedures mechanism of the Human Rights Council is composed of independent experts who address economic, social, cultural, civil and political rights in the context of thematic or country-specific mandates.²⁶² Like the treaties bodies, Special Procedures report to the Human Rights Council. At the time of writing, the Special Procedures mechanism has 36 thematic mandates.²⁶³ There are Special

²⁶² Office of the High Commissioner for Human Rights, 'Special Procedures of the Human Rights Council,' 2013, available at: <http://www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx>.

²⁶³ Office of the High Commissioner for Human Rights, 'Thematic Mandates,' 2013, available at: <http://www.ohchr.org/EN/HRBodies/SP/Pages/Themes.aspx>. The special procedures with thematic mandates are the Special Rapporteur on adequate housing as a component of the right to an adequate standards of living, and on the right to non-discrimination in this context; Working Group of Experts on people of African descent; Working Group on arbitrary detention; Special Rapporteur on the sale of children, child prostitution and child pornography; Special Rapporteur in the field of cultural rights; Independent expert on the promotion of a democratic and equitable international order; Special Rapporteur on the right to education; Independent expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; Working Group on enforced or involuntary disappearances; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on extreme poverty and human rights; Special Rapporteur on the right to food; Independent Expert on the effects of foreign debt and other related international financial

Rapporteurs or Independent Experts with country-specific mandates to examine the situation of human rights in Belarus, Cambodia, Côte d'Ivoire, Eritrea, Democratic People's Republic of Korea, Haiti, the Islamic Republic of Iran, Mali, Myanmar, Palestinian Territories Occupied since 1967, Somalia, Sudan, and the Syrian Arab Republic.²⁶⁴

Serious human rights situations requiring immediate attention may arise between review cycles. Special procedures provide an immediate response to pressing human rights violations, whereas United Nations Member States are only held to account for their human rights obligations under Universal Periodic Review every 4.5 years. Special procedures can also underscore issues of concern²⁶⁵ or promote specific recommendations by following-up on communications between the State concerned and the Human Rights Council. The recommendations of rapporteurs that arise from country visits should be 'specific, measurable, attainable, realistic and time-bound' in

obligations of the States on the full enjoyment of all human rights, particularly economic, social and cultural rights, Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on freedom of religion or belief; Special Rapporteur on the right of everyone to enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on the rights of indigenous peoples; Special Rapporteur on the human rights of internally displaced persons; Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination; Special Rapporteur on the human rights of migrants; Independent Expert on minority issues; Special Rapporteur on the promotion of truth, justice and reparation and guarantees of non-recurrence; Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; Special Rapporteur on contemporary forms of slavery, including its causes and its consequences; Independent Expert on human rights and international solidarity; Special Rapporteur on the promotion and protection of human rights while countering terrorism; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes; Special Rapporteur on trafficking in persons, especially women and children; Working Group on the issue of human rights and transnational corporations and other business enterprises, Special Rapporteur on the human rights to safe drinking water and sanitation; Working Group on the issue of discrimination against women in law and in practice, and Special Rapporteur on violence against women, its causes and consequences. See also Beate Rudolf, 'The Thematic Rapporteurs and Working Groups of the United Nations Commission on Human Rights,' *Max Planck Yearbook of United Nations Law*, pp. 289-291.

²⁶⁴ Office of the High Commissioner for Human Rights, 'Country Mandates,' 2013, available at: <http://www.ohchr.org/EN/HRBodies/SP/Pages/Countries.aspx>.

²⁶⁵ Franciscans International, 'Universal Periodic Review Follow-Up Strategy: Practical Advocacy Initiatives,' available at: www.upr-info.org/IMG/pdf/UPR_Follow-up_Strategy.pdf. See also Human Rights Council, 'Institution-building of the United Nations Human Rights Council,' 18 June 2006, A/HRC/5/1, p. 2, para. 3(j). A principle of Universal Periodic Review is that it should 'not diminish the Council's capacity to respond to urgent human rights situations.'

order to ‘facilitate implementation and monitoring.’²⁶⁶ Adequate follow-up measures must be in place to assess whether and the degree to which, the given State has implemented those recommendations.

Mandate holders should engage stakeholders to place additional pressure on governments to respond to communications and follow-up on recommendations. Regularly sharing communication reports on progress and setbacks will avoid duplication of work and conserve resources, whilst ensuring that the Universal Periodic Review process complements the work of the Special Procedures. Another way mandate holders can enhance the Universal Periodic Review process is by assisting with prioritising recommendations, follow-up on recommendations and monitoring implementation strategies.²⁶⁷

The quality and thoroughness of follow up procedures can also be enhanced by collaboration with the Office of the High Commissioner for Human Rights, other United Nations mandate holders, national human rights institutions, non-governmental organisations, civil society and other relevant stakeholders. Information-sharing, consultation, collaboration and mutual support among these parties can ensure ‘that there are follow-up mechanisms which are realistic and can find meaningful ways of assisting the State in implementing the recommendations.’²⁶⁸

In terms of the relationship between Special Procedures and Universal Periodic Review, 11 States made voluntary pledges relating to Special Procedures during the first cycle of review. Armenia, for example, ‘extended a standing invitation to all Special Procedures’²⁶⁹ and pledged to ‘continue to cooperate with all international

²⁶⁶ Note by OHCHR on Recent Practices in Follow-up to Special Procedures’ 17th Annual Meeting of Special Procedures mandate holders, 28 June-2 July 2010, Items V, VI, VII, Activities, available at: www2.ohchr.org/.../Note_OHCHR_SP_%20followup_Activities.doc, p. 4.

²⁶⁷ Philip Alston (ed), *United Nations and Human Rights: A Critical Appraisal* (Clarendon Press, Oxford 2000).

²⁶⁸ ‘Special Procedures Follow-up Activities,’ 16th Annual Meeting of Special Procedures mandate holders, 29 June-3 July 2009, Item VII, pp. 3-4, available at: www2.ohchr.org/english/bodies/chr/.../SP_FollowUpActivities16.pdf, p. 3-4.

²⁶⁹ Human Rights Council, ‘Report of the Working Group on Universal Periodic Review: Armenia,’ 6 July 2010, A/HRC/15/9, p. 3, para. 5.

bodies and Special Procedures.²⁷⁰ Spain,²⁷¹ Mexico,²⁷² the Netherlands,²⁷³ Italy,²⁷⁴ Brazil,²⁷⁵ Kazakhstan,²⁷⁶ Canada,²⁷⁷ Iraq,²⁷⁸ Hungary,²⁷⁹ Romania,²⁸⁰ and Lao People's Democratic Republic,²⁸¹ took the floor to congratulate Armenia for its pledge, demonstrating strong support for compliance with the Special Procedures mechanism of the United Nations. Chile likewise extended 'an open and permanent invitation to all Special Procedures of the Human Rights Council to visit the country,'²⁸² which was met with praise and support from Latvia²⁸³ and Viet Nam.²⁸⁴ The other States that made voluntary pledges relating compliance with the Special Procedures are Bahrain,²⁸⁵ Ecuador,²⁸⁶ El Salvador,²⁸⁷ Iraq,²⁸⁸ Lao Democratic People's Republic,²⁸⁹ Palau,²⁹⁰ Panama,²⁹¹ Solomon Islands,²⁹² and Thailand.²⁹³

A further 532 recommendations (or 0.24% of 21,353 recommendations in total) referred to compliance with Special Procedures. Although many of these recommendations are similar in nature, the following examples demonstrate a slight

²⁷⁰ *Ibid*, p. 5, para. 22.

²⁷¹ *Ibid*, p. 5, para. 34.

²⁷² *Ibid*, p. 7, para. 38.

²⁷³ *Ibid*, p. 8, para. 42.

²⁷⁴ *Ibid*, para. 45.

²⁷⁵ *Ibid*, para. 49.

²⁷⁶ *Ibid*, p. 9, para. 54.

²⁷⁷ *Ibid*, para. 55.

²⁷⁸ *Ibid*, pp. 9-10, para. 59.

²⁷⁹ *Ibid*, p. 10, para. 61.

²⁸⁰ *Ibid*, para. 67.

²⁸¹ *Ibid*, p. 11, para. 69.

²⁸² Human Rights Council, 'Report of the Working Group on Universal Periodic Review: Chile,' 4 June 2009, A/HRC/12/10, p. 4, para. 15.

²⁸³ *Ibid*, p. 13, para. 80.

²⁸⁴ *Ibid*, p. 13, para. 86.

²⁸⁵ Human Rights Council, 'Report of the Working Group on Universal Periodic Review: Bahrain,' 22 May 2008, A/HRC/8/19, p. 5, para. 11.

²⁸⁶ Human Rights Council, Report of the Working Group on Universal Periodic Review: Ecuador,' 5 July 2012, A/HRC/21/4, p. 8, para. 59.

²⁸⁷ *Ibid*, p. 20, para. 84.

²⁸⁸ Human Rights Council, Report of the Working Group on Universal Periodic Review: Iraq,' A/HRC/14/4, 15 March 2010, p. 23, para. 87.

²⁸⁹ Human Rights Council, 'National Report Submitted in Accordance with paragraph 15(a) of the Annex to Human Rights Council Resolution 5/1: Lao People's Democratic Republic,' 22 February 2010, A/HRC/WG.6/8/LAO/1, p. 17, para. 81.

²⁹⁰ Human Rights Council, 'Report of the Working Group on Universal Periodic Review: Palau,' 11 July 2011, A/HRC/18/5, p. 4, para. 13.

²⁹¹ Human Rights Council, 'Report of the Working Group on Universal Periodic Review: Panama,' A/HRC/16/6, 4 January 2011, p. 18, para. 72(c).

²⁹² Human Rights Council, 'Report of the Working Group on Universal Periodic Review: Solomon Islands,' A/HRC/18/8, 11 July 2011, p. 6, para. 28.

²⁹³ Human Rights Council, 'Report of the Working Group on Universal Periodic Review: Thailand,' A/HRC/19/8, 8 December 2011, p. 12, para. 87.

range in scope. Some recommendations called for the State concerned to ‘consider extending a standing invitation to all Special Procedures of the Human Rights Council,’²⁹⁴ whereas others called for ‘an agile and efficient mechanism to respond to requests for information formulated by Special Procedures in their communications...’²⁹⁵

Special procedures complement the work of Universal Periodic Review, as mandate holders identify human rights issues that are often reflected in the Universal Periodic Review process. Universal Periodic Review reports and outcome documents likewise provide tools for mandate holders when issuing communications, conducting country missions, developing thematic studies and framing recommendations.

8. Human Rights Treaty Bodies

There are two types of United Nations human rights mechanisms—bodies that are Charter-based and State-led and those that are treaty-based and expert-led.²⁹⁶ The Charter-based bodies are comprised of the Human Rights Council, Special Procedures of the Human Rights Council, the Human Rights Council complaints procedures and Universal Periodic Review. The ten treaty-based bodies that monitor adherence to the core international human rights treaties are the:

- a. Human Rights Committee²⁹⁷ (International Covenant on Civil and Political Rights)²⁹⁸

²⁹⁴ Human Rights Council, ‘Report of the Working Group on Universal Periodic Review: Afghanistan,’ 20 July 2009, A/HRC/12/9, p. 22, para. 17.

²⁹⁵ *Ibid*, para. 17.

²⁹⁶ Piccone, Ted, *Catalysts for Change: How the U.N.’s Independent Experts Promote Human Rights* (Brookings Institution Press, Washington 2012).

²⁹⁷ As per Protocol 1 of the *International Covenant on Civil and Political Rights*, individuals who claim their human rights have been violated under the *Covenant* can submit claims to the Committee against States party to the *Covenant* and Protocol, provided all other remedies have been exhausted. Under Article 41 of the *Covenant*, the Committee has the authority to accept inter-state complaints.

²⁹⁸ *International Covenant on Civil and Political Rights* (adopted 16 December 1966, entered into force 23 March 1976) 999 United Nations Treaty Series 171.

- b. Committee on Economic, Social and Cultural Rights²⁹⁹ (International Covenant on Economic, Social and Cultural Rights)³⁰⁰
- c. Committee on the Elimination of Racial Discrimination³⁰¹ (Convention on the Elimination of Racial Discrimination)³⁰²
- d. Committee on the Elimination of Discrimination Against Women³⁰³ (Convention on the Elimination of Discrimination against Women)³⁰⁴
- e. Committee Against Torture³⁰⁵ (Convention against Torture and Cruel, Inhuman and Degrading Treatment)³⁰⁶ and Subcommittee on Prevention on Torture (Optional Protocol to the Convention against Torture)³⁰⁷

²⁹⁹ The Committee on Economic, Social and Cultural Rights monitors and evaluates the degree to which States party to the International Covenant on Economic, Social and Cultural Rights meet their obligations under the Covenant. The Committee can request that the Economic and Social Council issue a request to the State party for an invitation to the State territory with a view to assessing the State's adherence with its human rights obligations under the *Covenant*. Non-governmental organisations can submit reports and present information on human rights violations in a given country during a Committee session. On 10 December 2008, the General Assembly unanimously adopted the Optional Protocol to the *Covenant*, which grants the Committee the competence to receive and consider complaints from individuals.

³⁰⁰ *International Covenant on Economic, Social and Cultural Rights* (adopted 16 December 1966, entered into force 3 January 1976) United Nations General Assembly Resolution 2200/A (XXI) 27.

³⁰¹ The Committee on the Elimination of Racial Discrimination issues general recommendations stemming from thematic discussions and considers periodic reports to ensure States party to the International Convention on the Elimination of All Forms of Racial Discrimination comply with their obligations. The Committee hears individual complaints under Article 14 of the Convention. Individual complaints are brought to the relevant State's attention in order for that State to offer an explanation and potential remedy. The Committee makes recommendations based on its correspondence with the State and individual.

³⁰² *International Convention on the Elimination of All Forms of Racial Discrimination* (adopted 21 December 1965, entered into force 4 January 1969) United Nations General Assembly Resolution 2106/19.

³⁰³ The Committee on the Elimination of Discrimination against Women makes recommendations based on whether States party to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) are meeting their human rights obligations under the Convention.

³⁰⁴ *Convention on the Elimination of All Forms of Discrimination against Women* (adopted 18 December 1979, entered into force 3 September 1981) United Nations General Assembly Resolution 34/180 27(1).

³⁰⁵ The role of the Committee against Torture (CAT) is three pronged. The Committee considers individual and inter-State complaints, and undertakes inquiries under Article 22 of the Convention against Torture. In addition, the Committee issues concluding observations after examining regular reports submitted by States party to the Convention. The Committee also addresses thematic issues by developing general comments.

³⁰⁶ *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (adopted 10 December 1984, entered into force 26 June 1987) United Nations General Assembly Resolution 39/46 27(1).

³⁰⁷ *Optional Protocol to the Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment* (adopted 18 December 2002, entered into force 22 June 2006) United Nations General Assembly Resolution 57/199.

- f. Committee on the Rights of the Child³⁰⁸ (Convention on the Rights of the Child)³⁰⁹
- g. Committee on Migrant Workers³¹⁰ (International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families)³¹¹
- h. Committee on the Rights of Persons with Disabilities³¹² (Convention on the Rights of Persons with Disabilities)³¹³
- i. Committee on Enforced Disappearances³¹⁴ (Convention for the Protection of All Persons from Enforced Disappearance)³¹⁵

Each human rights treaty body has a pre-sessional working group ‘which drafts the list of issues [and] provides an opportunity to call upon the States concerned to provide more concrete information on the progress of implementation’³¹⁶ in regard to its obligations under the corresponding treaty. The concerned State will submit updated information on the status of implementation for the body’s consideration. This sounds strikingly similar to Universal Periodic Review, which likewise requires concerned

³⁰⁸ The Committee on the Rights of the Child monitors State implementation of the Convention on the Rights of the Child and its two optional protocols. The Committee bases its decisions on reports submitted by States party (within two years of accession and every five years thereafter) and does not have an individual complaints process.

³⁰⁹ *Convention on the Rights of the Child* (adopted 20 November 1989, entered into force 2 September 1990) United Nations General Assembly Resolution 44/25 49

³¹⁰ The Committee on Migrant Workers is comprised of independent experts who monitor implementation of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. States that ratify the Convention are required to report within their first year of accession, then every five years thereafter. The Committee also hears individual complaints from individuals.

³¹¹ *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* (adopted 18 December 1990, entered into force 1 July 2003) United Nations General Assembly Resolution 45/158.

³¹² The Committee on the Rights of Persons with Disabilities monitors implementation of the Convention on the Rights of Persons with Disabilities. State parties to the Convention must submit a report within two years of ratifying the Convention and every four years onwards. The Committee hears complaints from individuals who claim their rights have been violated under the *Convention*.

³¹³ *Convention on the Rights of Persons with Disabilities* (adopted 24 January 2007) United Nations General Assembly Resolution 61/106.

³¹⁴ The Committee on Enforced Disappearances is comprised of independent experts to whom States party to the Convention regularly report on implementation. Based on these reports, the Committee makes recommendations to the State concerned. Under Article 31, the Committee is empowered to receive communications from individuals who claim that their rights under the Convention have been violated.

³¹⁵ *Convention on the Protection of All Persons from Enforced Disappearance* (adopted 17 January 2007, entered into force 23 December 2010) United Nations General Assembly Resolution 61/177. See the following for additional information about the human rights treaty bodies: Office of the High Commissioner for Human Rights, ‘Monitoring the Core International Human Rights Treaties,’ 2013, available at: <http://www.ohchr.org/EN/HRBodies/Pages/TreatyBodies.aspx>; See also Michael O’Flaherty and Claire O’Brien, ‘Reform of UN Human Rights Treaty Monitoring Bodies: a Critique of the Concept Paper on the High Commissioner’s Proposal for a Unified Standing Treaty Body,’ (2007) 7 *Human Rights Law Review* 141.

³¹⁶ Franciscans International, ‘Universal Periodic Review Follow-Up Strategy: Practical Advocacy Initiatives,’ available at: www.upr-info.org/IMG/pdf/UPR_Follow-up_Strategy.pdf

States to submit periodic reports regarding adherence to, *inter alia*, obligations found in international treaties to which a State is a party for the purpose of identifying recommendations for improvement.³¹⁷ The difference is that the latter is also based on a summary of stakeholder reports and a compilation of United Nations documentation. Bearing in mind that States have a vested interest in minimising the perception of failing to adhere to international human rights obligations, national reports may deliberately omit relevant information. Objective information from other sources, such as stakeholders and United Nations documentation could help fill this gap. In this same vein, Universal Periodic Review provides a forum for ongoing consultation with civil society and the involvement of relevant stakeholders, which can indirectly influence the review process.

Another crucial difference is the requirement that States under review expressly accept or reject recommendations stemming from the Universal Periodic Review process, whereas there is no such requirement for treaty body recommendations. ‘Responding is only a party of the story: observers and even treaty body members want to know whether the State parties are actually implementing the recommendations’ in order to shape follow-up measures.³¹⁸ Express acceptance of recommendations during Universal Periodic Review reaffirms State commitment to take action and follow through with implementation. While clear rejection of UPR recommendations can help reviewing States and stakeholders identify issues of concern that require further lobbying and pressure to advance, it could also have an unintended effect ‘on the authority of the original recommendation, be it a treaty body or a body of the Council itself.’³¹⁹

When comparing the recommendations of treaty bodies to those made during Universal Periodic Review, it is to be expected that the former will consist of recommendations solely related to a particular international human rights treaty,

³¹⁷ Nigel Rodley, ‘United Nations Non-Treaty Procedures for Dealing with Human Rights Violations,’ in Hurst Hannum (ed) *Guide to International Human Rights Practice* (2nd ed, Philadelphia, University of Pennsylvania Press 1992), p. 53.

³¹⁸ Felice D. Gaer, ‘Implementing Treaty Body Recommendations: Establishing Better Follow-up Procedures,’ in M. Cherif Bassiouni and William A. Schabas, *New Challenges for the UN Human Rights Machinery* (Intersentia, Cambridge 2011), p. 115.

³¹⁹ Nigel Rodley, ‘United Nations Non-Treaty Procedures for Dealing with Human Rights Violations,’ in Hurst Hannum (ed) *Guide to International Human Rights Practice* (2nd ed, Philadelphia, University of Pennsylvania Press 1992), p. 55.

whereas recommendations made during Universal Periodic Review span, *inter alia*, all of the international human rights treaties to which a State is a party. A further difference is that while treaty bodies refer to the withdrawal of reservations from international human rights treaties, it is logical for them to refrain from recommendations regarding ratification. A State is reviewed before a treaty body, because it has already ratified the corresponding international human rights treaty or optional protocol. It will not call for ratification of other treaties, with the exception of optional protocols, because that would fall beyond the scope of its mandate. This is not the case with Universal Periodic Review. Of the 21,353 recommendations made during the first cycle of review, 2383 call for ratification of outstanding treaties or their optional protocols.

There are frequent instances of repetition of recommendations made during the interactive dialogue, as States are often unaware of the recommendations other States intend to put forth. Treaty body recommendations are made via consensus among the members of the Committee, thus eliminating the risk of repetition among recommendations. However, reaching recommendations by consensus poses a different risk—that of diluting the substance of recommendations in order to gain consensus among experts from different countries. Recommendations made during Universal Periodic Review have the potential to be more critical or more generous with praise, because they represent the views of an individual State and are thus politically motivated. It could have, however, the reverse effect if recommending States do not want to accept sole responsibility for making critical recommendations, especially to a State that is an economic or political ally.

Using Morocco as an example to compare recommendations made during Universal Periodic Review to those of the Human Rights Committee reveals that treaty body recommendations tend to be more detailed and grounded in specific international human rights obligations,³²⁰ whereas recommendations made during Universal Periodic Review can be more general. For instance, during its Universal Periodic Review, Morocco received a recommendation from Saudi Arabia to ‘continue its

³²⁰ Piccone, Ted, *Catalysts for Change: How the U.N.’s Independent Experts Promote Human Rights* (Brookings Institution Press, Washington 2012).

achievements in the field of human rights,³²¹ which is a rather broad recommendation that does not require new action on part of the State concerned or cite the source of the recommendation as found in the criteria set out for the review. In contrast, the Human Rights Committee made specific recommendations requiring concrete action. The Committee called for Morocco to ‘amend its legislation and practice to allow a person under arrest to have access to a lawyer from the beginning of their period in custody,’³²² citing specific provisions of the International Convention on Civil and Political Rights as the source of Morocco’s obligation.

The Netherlands’ recommendation that Morocco ‘continue the harmonization of its domestic law with regard to its international obligations on human rights’³²³ does not refer to specific legislation or specific international human rights obligations, or require any action by the State in terms of bringing domestic legislation in line with international human rights obligations, aside from what it is already doing. The Human Rights Committee’s recommendations call for new action to be taken, but likewise do not specify the precise legislation that the State should introduce or amend. For example, the Committee recommended that Morocco ‘should comply with provisions of articles 3, 23 and 26 of the Covenant by revising the legislation concerned’³²⁴ and ‘take the necessary measures to prevent any harassment of journalists and to ensure that its legislation and practices give full effect to the requirements of article 19 of the Covenant.’³²⁵ Here we find that both mechanisms yielded recommendations that are non-specific, but the difference is the Committee cites the source of the obligation in international human rights law.

Another comparison based on Morocco’s Universal Periodic Review and treaty body reviews suggests that the two mechanisms produce similar recommendations. Similar to the United Kingdom’s recommendation that Morocco ‘continue its efforts to

³²¹ Human Rights Council, ‘Report of the Working Group on the Universal Periodic Review: Morocco,’ 22 May 2008, A/HRC/8/22, p. 13, para. 75.4.

³²² Human Rights Committee, ‘Consideration of Reports Submitted by States Parties under Article 40 of the Covenant: Morocco,’ 1 December 2004, CCPR/CO/82/MAR, p. 2, para. 18.

³²³ Human Rights Council, ‘Report of the Working Group on the Universal Periodic Review: Morocco,’ 22 May 2008, A/HRC/8/22, p. 13, para. 75.9.

³²⁴ Human Rights Committee, ‘Consideration of Reports Submitted by States Parties under Article 40 of the Covenant: Morocco,’ 1 December 2004, CCPR/CO/82/MAR, p. 2, para. 27.

³²⁵ *Ibid*, para. 23.

improve prison conditions,³²⁶ the Committee called on Morocco to ‘improve conditions in line with article 10 of the Covenant and should institute alternative penalties.’³²⁷ Again, the recommendations are quite similar, but the Committee refers to the source of the obligation as found in the Covenant.

A recommendation advanced by Slovenia during Morocco’s review is strikingly similar to a recommendation made by the Committee on the Elimination of Discrimination against Women. Slovenia called for Morocco ‘to communicate to the United Nations Secretary-General the withdrawal of its reservations to CEDAW (article 9, paragraph 2, article 16, paragraph 1 (h), and article 16, paragraph 2, as well as its declaration on article 15, paragraph 4);’³²⁸ just under four years prior, the Committee stated that:

While noting the public announcement, in March 2006, as well as during with the Committee, of the State party’s intention to withdraw its reservation to article 9, paragraph 2, article 16, subparagraph 1(e) and article 16, paragraph 2, as well as of its declaration on article 15, paragraph 4, the Committee expresses concern that the withdrawal of those reservations and declarations has not been formally communicated to the depositary of the Convention.³²⁹

This above is an example of overlap between the work of the treaty bodies and Universal Periodic Review, despite the principle that Universal Periodic Review should ‘complement and not duplicate other human rights mechanisms.’³³⁰ In practice, such overlap is unavoidable, because recommendations made by the treaty bodies and those stemming from Universal Periodic Review are based on intersecting criteria under the international human rights treaties. Perhaps Slovenia was unaware that the Committee on the Elimination of Discrimination against Women had issued a similar recommendation in its earlier report, suggesting that State-led and expert-led committees produce similar recommendations. The purpose of Universal Periodic

³²⁶ Human Rights Council, ‘Report of the Working Group on the Universal Periodic Review: Morocco,’ 22 May 2008, A/HRC/8/22, p. 13, para. 75.7.

³²⁷ Human Rights Committee, ‘Consideration of Reports Submitted by States Parties under Article 40 of the Covenant: Morocco,’ 1 December 2004, CCPR/CO/82/MAR, p. 3, para. 17.

³²⁸ Human Rights Council, ‘Report of the Working Group on the Universal Periodic Review: Morocco,’ 22 May 2008, A/HRC/8/22, p. 13, para. 75.3.

³²⁹ Committee on the Elimination of Discrimination against Women, ‘Concluding Comments of the Committee on the Elimination of Discrimination against Women: Morocco,’ 4 April 2008, CEDAW/C/MAR/CO/4, p. 3, para. 4.

³³⁰ Human Rights Council, ‘Institution-building of the United Nations Human Rights Council,’ 18 June 2006, A/HRC/5/1, p. 2, para. 3(f).

Review complementing and not duplicating the other human rights mechanisms is to represent an added value.³³¹ Because States are not required to accept the recommendations of treaty bodies, but have the discretion to accept recommendations stemming from the review, a State's acceptance of a recommendation, such as the one posed by Slovenia above, could represent added value to the work of other human rights mechanisms in that the State concerned makes an express commitment to implement its human rights obligations.

The treaty bodies also carry out a number of unique functions, such as:

- a. reviewing individual complaints regarding alleged violations of the norms in the treaty and adoption of views by the relevant treaty body on the individual petitions received;
- b. considering inter-State complaints; and
- c. inquiring directly on-site into patterns of violations of the norms in the treaty. Here, the treaty supervisory body initiates an inquiry, conducts an on-site visit with fact-finding and adopts conclusions and recommendations that become, in some measure, public thereafter.³³²

Recognising the differences and overlap between these two mechanisms is key, as the Universal Periodic Review process is intended to 'complement and not duplicate'³³³ the work of United Nations treaty bodies. Although Universal Periodic Review is not designed to duplicate the recommendations of treaty bodies, treaty body recommendations inform the review process and encourage implementation of obligations embodied in international human rights instruments. If States are to be held accountable, *inter alia*, for adherence to international human rights treaties to which they are a party, compliance with treaty body procedures set out within those treaties appears to fall within the criteria for the review process found in Human Rights Council resolution 5/1. As such, overlap between the two mechanisms can be found in the concerns raised and recommendations advanced during Universal Periodic Review.

Of the 21,353 recommendations advanced during the first cycle of review, 238 recommendations refer to the treaty bodies. Whether this overlap complements or

³³¹ *Ibid.*

³³² Quoted directly from Felice D. Gaer, 'A Voice Not an Echo: Universal Periodic Review and the United Nations Treaty Body System,' (2007) 7 *Human Rights Law Review* 1, p. 118.

³³³ *Ibid.*

duplicates the work of the treaty bodies rests on the nature of the recommendation or statement and one's subjective categorisation of complementariness or duplication, as the resolution on Institution Building provides no guidance on the relationship between the treaty bodies and Universal Periodic Review apart from the principle noted above. For instance, during its first review Belarus accepted recommendations to 'strengthen its cooperation with the international human rights system, through the timely submission of periodic reports to the relevant treaty bodies (Egypt); present the remaining reports to treaty bodies without delay, and make every effort to avoid such delays in the future (Hungary); intensify its efforts with a view to submitting delayed reports to treaty bodies (Spain).'³³⁴ These recommendations could be viewed as complementary in the sense of encouraging a State under review to meet its existing obligations under international human rights treaties to which it is a party as set out in Institution Building resolution 5/1. On the other hand, it could be argued that the treaty bodies have a duty to ensure States party to the human rights treaties follow treaty body procedures, such as regular reporting and implementation of recommendations; therefore, it should not form the basis of discussion during Universal Periodic Review.

In line with the Human Rights Council's institution-building resolution, Universal Periodic Review is meant to 'complement and not duplicate other human rights mechanisms, thus representing an added value.'³³⁵ As demonstrated, there is some unavoidable overlap between Universal Periodic Review and the work of the treaty bodies, as both mechanisms address human rights obligations stemming from the international human rights instruments to which a State is a party. However, there are fundamental differences that distinguish the two mechanisms, thus fostering a more complementary relationship that avoids duplication.

Every party involved in Universal Periodic Review carries out an integral role in ensuring the process functions in a way that meets intended outcomes in line with its principles and objectives, namely to improve the human rights situation on the ground'³³⁶ through 'an intergovernmental... United Nations Member-driven'³³⁷

³³⁴ Human Rights Council, 'Report of the Working Group on Universal Periodic Review: Belarus,' 21 June 2010, A/HRC/15/16, p. 14, para. 97.12.

³³⁵ Human Rights Council, 'Institution-Building of the United Nations Human Rights Mechanisms,' 18 June 2006, A/HRC/RES/5/1, p. 2, para. 3(f).

³³⁶ *Ibid.*, p. 2, para. 4(a).

³³⁷ *Ibid.*, p. 2, para. 3(d).

process that ensures ‘the participation of all relevant stakeholders’³³⁸ and complements the other human rights mechanisms.³³⁹ The relationship between these parties in the context of Universal Periodic Review is best understood through a discussion of what occurs during each stage of the process, as found in the following chapter.

³³⁸ *Ibid*, p. 2, para. 3(m).

³³⁹ *Ibid*, p. 2, para. 3(f).

Chapter 4

Stages of the Universal Periodic Review Process

This chapter explains the relationship between the parties involved in Universal Periodic Review at every stage of the process. Each new cycle begins with consultations between the State concerned and relevant stakeholders in preparation for the submission of national and stakeholder reports. These reports, along with a compilation of United Nations documentation, form the basis for discussion among Member and Observer States during the interactive dialogue. The United Nations Working Group prepares an outcome report based on recommendations and voluntary commitments stemming from the dialogue, which the Human Rights Council adopts during its plenary session. States under review are expected to implement accepted recommendations and voluntary commitments in advance of the next cycle. Recommending States and relevant stakeholders assume an important role in monitoring and following-up on the status of State implementation of the outcome of the review.

1. National Consultations

Approximately one year before the review process begins, the State concerned is required to hold national consultations with civil society, national human rights institutions and human rights experts in line with the principle that Universal Periodic Review ought to ‘ensure the participation of all relevant stakeholders, including non-governmental organizations and national human rights institutions.’³⁴⁰ National consultations should centre on identifying strengths, challenges, current trends and debates to define the human rights situation in the given State and discuss proposals for improvement. Prior to the review, States concerned must identify how to maximise the participation of civil society in the consultative process in terms of being representative of local and national human rights organisations and accessible to members of the public. Demonstrating an example of best practice during the consultation stage, the Ministry of Foreign Affairs in Denmark consulted with its national courts, parliament, ombudsman, auditor general, law and bar association, the

³⁴⁰ Human Rights Council, ‘Institution-building of the United Nations Human Rights Council,’ 18 June 2006, A/HRC/5/1, p. 2, para. 3(m).

Board for Equal Treatment, the Danish Data Protection Agency, National Council for Children, the Council for Socially Marginalized People and the Equal Opportunities Centre for Disabled Persons. At a minimum, States under review should hold public consultations one year before their review is scheduled; however, it would be ideal for consultations to take place throughout the review process, particularly to seek input from stakeholders in the preparation of national plans of action and mid-term implementation reports.³⁴¹

Civil society organisations are likewise encouraged to hold consultations, as the Irish Commission for Human Rights had in preparation for Ireland's first review, to disseminate information about the Universal Periodic Review process and to encourage non-governmental organisations and human rights institutions to submit stakeholder reports and contribute to national reports; make statements during the plenary session of the United Nations Working Group; monitor implementation of accepted recommendations and voluntary commitments; and follow-up to ensure effective implementation.

2. Reporting

In accordance with Human Rights Council resolution 5/1, the review is to be based on three documents: a report submitted by the State concerned, a summary of stakeholder reports and 'a compilation of United Nations information' submitted by the Office of the United Nations High Commissioner for Human Rights.³⁴²

The national report should outline best practices and constraints, as well as voluntary commitments to overcome any barriers to the promotion and protection of human rights. The report should also include relevant domestic legislation and international obligations. Whilst States have a vested interest in evading criticism by emphasising achievements and 'glossing over' challenges, the inclusion of a summary of stakeholder reports and compilation of United Nations documentation fills this gap, ensuring that Universal Periodic Review is 'a cooperative mechanism based on objective and reliable information.'³⁴³ Unlike the treaty bodies that base State reviews on the national reports and accept information from stakeholders only as 'shadow

³⁴¹ *Ibid.*

³⁴² *Ibid.*, pp. 3-4, para. 15.

³⁴³ *Ibid.*, p. 2, para. 3(b).

reports,' Universal Periodic Review provides equal consideration to the three reports that form part of the documentation on which the review is based.³⁴⁴

Stakeholder reports are prepared by civil society organisations, the national human rights institution (where applicable), non-governmental organisations and other relevant institutions seeking to monitor and improve the human rights situation in a respective country via Universal Periodic Review. Stakeholder reports should include an executive summary, relevant background information, and a list of concerns, coupled with recommendations. The Office of the High Commissioner for Human Rights collates stakeholder reports into a single report of 10 pages, which can cause some issues to be omitted from or insufficiently detailed within these reports.

The report prepared by the Office of the High Commissioner for Human Rights draws from information contained in United Nations documents. Again, this report is limited to 10 pages, which means that some relevant information is either excluded or diluted. The present author observed this issue first hand after taking the lead on submitting a stakeholder report to the Office of the High Commissioner for Human Rights on behalf of the Irish Centre for Human Rights, National University of Ireland, Galway. Although the Commissioner's report made several references to recommendations advanced by the Centre, the substance of those recommendations had been diluted. For instance, according to the summary report 'Irish-HRC reported that the jurisdiction of the non-jury Special Criminal Court (SCC) had been extended in recent years to cover most organised crime offences and the Irish Centre for Human Rights (ICHR) recommended that Ireland close the SCC.'³⁴⁵ The Commissioner's rephrasing fails to explain the rationale for this recommendation and omits the Centre's suggestion to repeal the *Offences against the State Act*, which is inextricably linked with this recommendation. For recommending States unfamiliar with the issue, they are unlikely to be swayed without any supporting or explanatory evidence. Indeed, of

³⁴⁴ Allehone Mulugeta Abebe, 'Of Shaming and Bargaining: African States and the Universal Periodic Review of the United Nations Human Rights Council,' (2009), *Human Rights Law Review*, p. 11; Anne Bayefsky, 'Report on the UN Human Rights Treaties: Facing the Implementation Crisis, in the First Report of the Committee on International Human Rights Law and Practice.' (1996) International Law Association, Helsinki Conference. Reproduced in appendix 6, pp. 681-699, to Bayefsky, Anne (ed), 2000. *The UN Human Rights System in the 21st Century*. Kluwer Law International.

³⁴⁵ Human Rights Council, Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15(c) of the annex to Human Rights Council resolution 5/1: Ireland,' 22 July 2011, A/HRC/WG.6/12/IRL/3, para. 35.

the 168 recommendations posed to Ireland during the first cycle of review, none addressed this issue.

In accordance with resolution 6/102, the compilation of United Nations documentation should contain a description of:

- a. the consultative process in preparation for review;
- b. background on the concerned State's institutional framework for protecting human rights, including the 'constitution, legislation, policy measures, national jurisprudence, human rights infrastructure...and scope of international obligations;'
- c. State adherence to its human rights obligations, implementation of voluntary commitments and 'cooperation with human rights mechanisms;'
- d. 'achievements, best practices, challenges and constraints;'
- e. 'priorities, initiatives and commitments...to overcome those challenges and constraints;'
- f. its potential for capacity-building; and
- g. whether technical assistance is required.³⁴⁶

3. Interactive Dialogue

During the beginning of each interactive dialogue, the State concerned delivers a presentation on the human rights situation in its country and responds to written questions (submitted in advance) from UN Member and Observer States.³⁴⁷ The presentation should provide an overview of relevant 'laws, policies, good practices and challenges.'³⁴⁸ Afterwards, a 3.5-hour interactive dialogue takes place between recommending States and the State under review during the Working Group of the Universal Periodic Review.³⁴⁹ The dialogue is based on the presentation of the State concerned, information contained in a summary of stakeholder reports, and a report drawn from relevant United Nations documents prepared by the Office of the High Commissioner for Human Rights and the national report of the State under review.

³⁴⁶ Human Rights Council, 'General Guidelines for the Preparation of Information under the Universal Periodic Review,' 27 September 2007, A/HRC/6/102, A-G.

³⁴⁷ Human Rights Council, 'Modalities and Practices for the Universal Periodic Review Process,' 9 April 2008, A/HRC/PRST/8/1, para. 7(a).

³⁴⁸ UPR-info.org and the Irish Council for Civil Liberties, 'The Universal Periodic Review: A Plain English Guide,' 10 December 2010.

³⁴⁹ Human Rights Council, 'Modalities and Practices for the Universal Periodic Review Process,' 9 April 2008, HRC/PRST/8/1, para. 7.

During the interactive dialogue, Member and Observer States pose questions, provide comments and make recommendations to the State under review. States that are a member of the Working Group/Human Rights Council have up to three minutes to speak, whilst Observer States, or countries that are not members of the Human Rights Council, are limited to two minutes. The State under review can respond to recommendations ‘whenever it is in a position to do so during the meeting of the Working Group, or between the session of the Working Group and the next session of the Council, or during the meeting of the Council at its plenary session.’³⁵⁰

Non-governmental organisations are unable to participate in the interactive dialogue, but can contribute by lobbying governments to pose questions, comment and make recommendations about pressing human rights issues. Stakeholders can lobby recommending States by proposing ‘central human rights questions and concerns... [and providing] concrete recommendations pointing towards suggested ways to improve the raised areas of concern.’³⁵¹

4. Universal Periodic Review Working Group Adopts the Outcome Report

The Troika drafts the Working Group report, which consists of a summary of the review proceedings, as well as a list of accepted, rejected and pending recommendations.³⁵² The outcome report outlines ‘a summary of the interactive dialogue, which will reflect recommendations and/or conclusions made by delegations during the interactive dialogue.’³⁵³ The report of the Working Group records recommendations accepted or rejected by the State concerned, as well as comments made by the reviewed State about its decisions to accept or reject each recommendation.³⁵⁴ The Universal Periodic Review Working Group meets within two weeks of the review, but not sooner than forty-eight hours after the review, to adopt the outcome report prepared by the troika, *ad referendum*, in collaboration with the

³⁵⁰ *Ibid*, para. 11.

³⁵¹ Lis Dhundale, ‘The Role of Civil Society,’ *Universal Periodic Review First Cycle: Reporting Methodologies from the Positions of the State, Civil Society and National Human Rights Institutions*. The Danish Institute for Human Rights, p. 32.

³⁵² Human Rights Council, ‘Modalities and Practices for the Universal Periodic Review Process,’ 9 April 2008, HRC/PRST/8/1, paras. 8-9.

³⁵³ *Ibid*, para. 8.

³⁵⁴ Human Rights Council, ‘Review of the Work and Functioning of the Human Rights Council,’ 12 April 2011, A/HRC/16/21, para. 10.

Secretariat and consultation with the reviewed State, providing the reviewed State with two weeks to modify the report.³⁵⁵

5. Human Rights Council Adopts Outcome Documents

As per paragraph 12 of presidential statement 8/1 of the Human Rights Council, ‘the review process starts at Working Group level and ends with the adoption of the outcome of the review by the Council at its plenary session.’³⁵⁶ Once the Working Group has adopted the outcome document and the reviewed State has submitted its modifications, the report is given to the Human Rights Council for consideration at the plenary session.³⁵⁷ During its plenary session, the Human Rights Council allocates up to an hour to adopt the final version of the outcome document for each State reviewed during the last session. Prior to the adoption of the outcome document, ‘the State concerned and the members States of the Council, as well as observer States, will be given the opportunity to express their views on the outcome of the review.’³⁵⁸ Stakeholders with ECOSOC status can also make general comments on the outcome of the review.³⁵⁹

The outcome document details voluntary commitments made by the State under review; the State’s view of the recommendations it has received; replies to issues that ‘were not sufficiently addressed during the interactive dialogue of the Working Group’;³⁶⁰ and, a summary of the comments made by the State under review and by Member and Observer States.³⁶¹ Before adopting the outcome report, the Human Rights Council can also specify necessary follow-up measures.

³⁵⁵ *Ibid.*, para. 8.

³⁵⁶ Human Rights Council, ‘Modalities and Practices for the Universal Periodic Review Process,’ 9 April 2008, HRC/PRST/8/1, para. 12.

³⁵⁷ *Ibid.*

³⁵⁸ Human Rights Council, ‘Institution-building of the United Nations Human Rights Council,’ 18 June 2006, A/HRC/5/1, para. 30.

³⁵⁹ *Ibid.*, para. 31.

³⁶⁰ Human Rights Council, ‘Follow-up to President’s Statement 8/1,’ 24 September 2008, HRC/PRST/9/2, p. 3, para. 13.

³⁶¹ *Ibid.*, para. 14.

6. State Implementation of Accepted Recommendations and Voluntary Commitments

From the second cycle of review onwards, States under review must account for implementation of voluntary commitments and accepted recommendation from the previous cycle.³⁶² Paragraph 33 of resolution 5/1, regarding follow-up on State compliance with its human rights obligations, further stipulates ‘the outcome of the universal periodic review, as a cooperative mechanism, should be implemented primarily by the State concerned and, as appropriate, by other relevant stakeholders.’³⁶³ However, ‘due to the preparation and hearing process as well as the time lag between the review of the State to the adoption of the outcome report, the time left for implementation is reduced considerably and approximately three years are left for this.’³⁶⁴ In support of the implementation process, States under review can develop national implementation plans, establish mechanisms to monitor the implementation of recommendations, table the adopted outcome report in Parliament, and submit regular updates to the Human Rights Council.

Stakeholders can play a crucial role in disseminating information in the outcome document to the public as indicators for measuring progress leading up to the next cycle of review; monitoring implementation of voluntary commitments and accepted recommendations; and following up on the full realisation of the measures that the State has committed to fulfil. National stakeholders can also contribute towards developing a ‘national action plan, strategy, policy papers, reform programmes etc. based on the UPR recommendations.’³⁶⁵ In cases where stakeholders are excluded from participating in this process, ‘they can submit written comments or alternative suggestions and encourage the State to conduct open hearing meetings.’³⁶⁶

If the State concerned does not have the capacity or resources to implement the recommendations it has accepted, it can apply for funding from the international

³⁶² Human Rights Council, ‘Institution-building of the United Nations Human Rights Council,’ 18 June 2006, A/HRC/5/1, para. 34; Human Rights Council, HRC/PRST/8/1, ‘Modalities and Practices for the Universal Periodic Review Process, 9 April 2008, para. 10.

³⁶³ Human Rights Council, ‘Institution-building of the United Nations Human Rights Council,’ 18 June 2006, A/HRC/5/1.

³⁶⁴ Lis Dhundale, ‘The Role of Civil Society, *Universal Periodic Review First Cycle: Reporting Methodologies from the Positions of the State, Civil Society and National Human Rights Institutions*. The Danish Institute for Human Rights, p. 36.

³⁶⁵ *Ibid.*

³⁶⁶ *Ibid.*

community through the Voluntary Fund for Financial and Technical Assistance for the Implementation of the Universal Periodic Review or the Voluntary Fund for Technical Cooperation in the Field of Human Rights.³⁶⁷ In an effort to streamline the implementation process for States, the Office of the High Commissioner for Human Rights has called upon ‘States under review, United Nations entities and other relevant stakeholders to join in a common effort in order to identify specific steps to accelerate national implementation of recommendations.’³⁶⁸

Since the first cycle of review, several States have taken steps towards the implementation of accepted recommendations and voluntary commitments. Some reviewed States have developed national plans of action, such as Bahrain, which has also established a steering committee comprised of government officials and representatives from the national human rights institution and non-governmental organisations to coordinate a national implementation strategy. Other courses of action include developing a document outlining all accepted recommendations, along with concrete steps towards implementing them. Other countries, such as Poland, established an inter-ministerial working group to direct governmental actions in response to accepted recommendations and voluntary commitments. Argentina,³⁶⁹

³⁶⁷ General Assembly, ‘Establishment of Funds for the Universal Periodic Review Mechanism of the Human Rights Council,’ 28 September 2007, A/RES/6/17; Office of the High Commissioner for Human Rights, ‘Terms of Reference for the Voluntary Fund for Financial and Technical Assistance for the Implementation of the Universal Periodic Review,’ 2009, available at: http://www.ohchr.org/Documents/HRBodies/UPR/TOR_TF_for_TC_assistance_UPR.pdf, para. 14, p. 3; Human Rights Council, ‘Enhancement of Technical Cooperation and Capacity-building in the Field of Human Rights,’ 17 October 2011, A/HRC/18/18.

³⁶⁸ UPR Info, ‘Follow-up,’ 2012, available at: <http://www.upr-info.org/-Follow-up-.html>

³⁶⁹ Ministerio de Relaciones Exteriores Comercio Internacional y Culto: De la Nación Argentina, ‘Informe de Avance Sobre el Cumplimiento de las Recomendaciones Formuladas a la Argentina en el Marco del Examen Periódico Universal,’ 15va Sesión del Consejo de Derechos Humanos, 23 de Septiembre de 2010. Only available in Spanish.

Azerbaijan,³⁷⁰ Bahrain,³⁷¹ Benin,³⁷² Chile,³⁷³ Columbia,³⁷⁴ Ecuador,³⁷⁵ Finland,³⁷⁶ the Former Yugoslav Republic of Macedonia,³⁷⁷ France,³⁷⁸ Japan,³⁷⁹ Mauritius,³⁸⁰ the Netherlands,³⁸¹ Poland,³⁸² Romania,³⁸³ Slovenia,³⁸⁴ Spain,³⁸⁵ Switzerland,³⁸⁶ Ukraine³⁸⁷ and the United Kingdom³⁸⁸ have issued reports on the status of

³⁷⁰ Permanent Mission of the Republic of Azerbaijan to the United Nations Office and Other International Organizations at Geneva, 'Interim Report of the Government of the Republic of Azerbaijan on the Implementation of the Recommendations by the Working Group of the UN Human Rights Council on the Universal Periodic Review with respect to the First Report of the Republic of Azerbaijan,' 17 January 2012.

³⁷¹ Permanent Mission of the Kingdom of Bahrain to the United Nations Office and Other International Organizations at Geneva, 'Kingdom of Bahrain's UPR Data Base Website,' 29 May 2009, available at: www.upr.bh.

³⁷² Mission Permanente du Benin Apre de l'Office des Nations Unieset des Autres Organisations Internationales a Genève, 'Examen Périodique Universel Mise en œuvre des Recommandations Evaluation a Mi-parcours,' 7 March 2012. Only available in Spanish.

³⁷³ The Permanent Mission of Chile of the United Nations Office and other International Organisations in Geneva, 'Letter to the Office of the U.N. High Commissioner for Human Rights,' 30 June 2009.

³⁷⁴ Libertad y Orden, 'Columbia y el Examen Periódico Universal de Derechos Humanos ((EPU) ante el Consejo de Derechos Humanos de las Naciones Unidas,' available at: www.derechoshumanos.gov.co. Only available in Spanish.

³⁷⁵ 'Avances del Ecuador en el Cumplimiento de sus Compromisos Voluntarios ante el Consejo de Derechos Humanos en el Contexto del Examen Periodico Universal – EPR,' 31 March 2010. Only available in Spanish.

³⁷⁶ Ministry for Foreign Affairs of Finland, 'Recommendations Received by Finland during the Consideration of its Human Rights Situation by the Working Group on the Universal Periodic Review in March 2008, and the Actions Undertaken by the Government of Finland in Response to these Recommendations,' 11 June 2010.

³⁷⁷ The Ministry of Foreign Affairs of the Republic of Macedonia, 'Midterm Report of the Republic of Macedonia on Progress in Implementing Recommendations,' May 2009-December 2011.

³⁷⁸ France, 'Examen Periodique Universel de la France au Conseil des Driots de L'Homme (2008): Suivi a Mi-Parcours des Recommandations et des Engagements Complémentaires,' 2010. Only available in French.

³⁷⁹ The Government of Japan, 'Mid-term Progress Report by Japan on its Implementation of Recommendations made in May 2008,' March 2011.

³⁸⁰ Republic of Mauritius, 'Mid-Term Progress Report on the Implementation of the Recommendations Made during the Universal Periodic of Mauritius in February 2009,' February 2011.

³⁸¹ The Netherlands, 'National Interim Report,' April 2010.

³⁸² Ministry of Foreign Affairs of the Republic of Poland, 'Universal Periodic Review Mid-Term Progress Report by Poland,' February 2011.

³⁸³ Government of Romania, 'National Reform Programme Implementation Report,' October 2008.

³⁸⁴ Republic of Slovenia, 'Mid-Term Report on the implementation of UPR Recommendations,' March 2012.

³⁸⁵ Spain, 'Seguimien to de las Recomendaciones Epu Aceptadasoir Espana,' 2011. Only available in Spanish.

³⁸⁶ Switzerland, 'Interim Assessment of the Implementation of the UPR Recommendations in Switzerland,' 30 April 2009.

³⁸⁷ The Permanent Mission of Ukraine to the United Nations Office and other International Organisations in Geneva, 'Interim Report of Ukraine on Implementation of the Recommendations Received by Ukraine,' 29 October 2010. Only available in Russian.

³⁸⁸ United Kingdom Mission to the Office of the United Nations and Other International Organisations at Geneva, 'Universal Periodic Review Mid-Term Progress Update by the United Kingdom of Great Britain and Northern Ireland on Its Implementation of Recommendations Agreed in June 2008.'

implementation. By adopting the best practices noted above, reviewed States demonstrate their commitment towards realising the outcome of the review, whilst providing a reference point for recommending States and stakeholders to follow-up on implementation.

7. Follow-up from the Review Process

Part F of resolution 5/1, regarding follow-up on State compliance with its human rights obligations, stipulates that the ‘international community will assist in implementing the recommendations and conclusions regarding capacity-building and technical assistance, in consultation with and with the consent of, the country concerned.’³⁸⁹ The Resolution further requires that the Human Rights Council will specify ‘if and when any specific follow-up is necessary.’³⁹⁰ Reviewed States must adhere to follow-up measures suggested by the Human Rights Council during the plenary session and will report on their progress during the second cycle of review.

Follow-up on State implementation of the review outcome is paramount to the success of the Universal Periodic Review process, because it requires States to account for their progress towards improving human rights at the ground level. The follow-up phase ‘will also determine the efficiency and credibility of the mechanism and demonstrate States’ engagement in the promotion and strengthening human rights.’³⁹¹

The Office of the Commissioner on Human Rights assumes a significant role in promoting State implementation of recommendations and following up on the outcome of Universal Periodic Review through:

- a. Reporting on the outcomes of United Nations human rights mechanisms, including Universal Periodic Review, within the annual report, country reports and thematic reports of the High Commissioner for Human Rights, reports prepared by Special Procedure mandate-holders and treaty bodies, and the strategic management plan.
- b. Developing additional reporting mechanisms, such as the Management Information System, and establishing benchmarks as indicators to monitor and measure progress and the status of State implementation of accepted recommendations and voluntary commitments.

³⁸⁹ Human Rights Council, ‘Institution-building of the United Nations Human Rights Council,’ 18 June 2006, A/HRC/5/1, p. 5, para. 36.

³⁹⁰ *Ibid.*, p. 6, para. 37.

³⁹¹ *Ibid.*

- c. Disseminating information on the outcomes of Universal Periodic Review (and other UN human rights mechanisms) and best practices that emerge during the first cycle of review.
- d. Strengthening dialogue among United Nations Member States to ensure universal cooperation towards the realisation of human rights at the ground level. The Office of the High Commissioner for Human Rights facilitates this process during country visits and through the work of Special Procedures and treaty bodies.
- e. Assessing requests for and providing technical assistance and capacity building support towards addressing specific barriers to improving the human rights situation at the ground level.

The Office of the High Commissioner for Human Rights could play a greater role in supporting the implementation of recommendations and facilitating follow-up measures through integrating the outcome of Universal Periodic Review into its programme of work. The outcome of Universal Periodic Review should be defined within the Office's strategic priorities, especially with respect to prioritising outcomes and ensuring follow-up occurs through other United Nations mechanisms.

Other stakeholders, such as national human rights institutions, non-government organisations, human rights experts and civil society, have an important role in monitoring State implementation and follow-up through:

- a. Promoting legal and policy reform based on accepted recommendations and voluntary commitments.
- b. Monitoring implementation of recommendations and voluntary commitments in the context of human rights at the ground level.
- c. Raising awareness of the review process and its outcomes by distributing publications and organising public events, discussions, seminars and workshops and by distributing easily accessible information.
- d. Mutual collaboration between relevant stakeholders on monitoring State implementation, following up on recommendations and voluntary commitments and preparing information for the next cycle of review.

In cases where the State concerned persistently fails to cooperate with accepted recommendations, the Human Rights Council can raise this issue during a forthcoming session.³⁹² For the first time, the Council is exercising this duty in addressing the non-

³⁹² UPR-info.org and the Irish Council for Civil Liberties, 'The Universal Periodic Review: A Plain English Guide,' 10 December 2010.

cooperation of Israel with the Universal Periodic Review mechanism in its second cycle due to its failure to submit a national report, attend its own review or provide reasons for this. Originally scheduled to take place on 29 January 2013, the review of Israel is rescheduled for October-November 2013 at the latest. The deferral of Israel's review sets a precedent for responses to non-cooperation with the review mechanism; however, all other States continue to actively participate. During a general debate on Universal Periodic Review, Remingiusz A. Henczel, President of the Human Rights Council, made a statement regarding action taken by the Council to address the situation:

Steps taken to urge Israel to resume its cooperation with the Council included the President of the Council writing to the Permanent Representative of Israel to the United Nations at Geneva to reassure him that the Universal Periodic Review was conducted in a transparent and equal manner. Underlining the necessity to maintain the universal character of the Universal Periodic Review mechanism, Mr Henczel said that he would continue to follow-up on the matter and that he would report back to the Council upon receipt of a written response from the Israeli Permanent Representative.³⁹³

At the time of writing, no further updates are available on the status of this situation as to whether Israel will renew its cooperation with the Council and attend its deferred review. Whether the Council will be required to take additional action to address the non-cooperation of Israel in the review process, remains unclear.

Universal Periodic Review is an ongoing process that extends beyond the 3.5-hour interactive dialogue between Member and Observer States every 4.5 years. The review's cyclical nature fosters continual monitoring and evaluation of the realisation of human rights standards, offering opportunities for collaboration among States and stakeholders from national consultations through to the follow-up phase.

Based on the overview of Universal Periodic Review in Part I of this thesis, Part II examines elements of the Universal Periodic Review process, including the indivisibility and interrelatedness of all human rights; State and regional participation during the review; the quality of recommendations; implementation and follow-up on

³⁹³ Office of the High Commissioner for Human Rights, 'Human Rights Council Holds General Debate on Universal Periodic Review,' 15 March 2013, available at: <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=13151&LangID=E>

accepted recommendations; and strengthening Universal Periodic Review. Part II further intends to demonstrate whether, given the aforementioned, the *stated* and *actual* principles, objectives and outcomes of Universal Periodic Review are congruent.

PART II:

An Evaluation of Universal Periodic Review

Chapter 5

Equal and Adequate Coverage of All Human Rights

General Assembly resolution 60/251 stipulates that ‘all human rights are universal, indivisible, interrelated, interdependent and mutually reinforcing, and that all human rights must be treated in a fair and equal manner, on the same footing and with the same emphasis.’³⁹⁴ Human Rights Council resolution 5/1 reaffirms that ‘Equal attention should be paid to all human rights. The balance of thematic mandates should broadly reflect the accepted equal importance of civil, political, economic, social and cultural rights, including the right to development...’³⁹⁵ Chapter 5 discusses the challenges associated with equal and adequate coverage of each human right during Universal Periodic Review. As per the criteria set out for the review process, the human rights obligations that each State is subject to vary, depending on which human rights treaties a given State has ratified. In addition to being subject to different obligations, each State faces a different set of challenges in relation to meeting those obligations. For these reasons, the process is designed in such a way that cannot ensure human rights are ‘treated in a fair and equal manner.’³⁹⁶

Resource limitations necessitate word limits on reporting and timing restrictions during the interactive dialogue. If each human right receives equal coverage during the review process, none would be detailed in any sort of depth, as these limitations inadvertently serve as a barrier to providing an adequate depiction of the human rights situation at the ground level in any given State under review. Each of these factors presents a set of challenges that prevent the Universal Periodic Review process from achieving adequate coverage of each human right.

1. Varying Human Rights Obligations

Every country faces a unique set of challenges in relation to meeting its human rights obligations. Aside from human rights protections that exist under the Charter of the

³⁹⁴ General Assembly, ‘Establishing the Human Rights Council and the Universal Periodic Review,’ 15 March 2006, A/RES/60/251, preamble.

³⁹⁵ Human Rights Council, ‘Institution-building of the United Nations Human Rights Council,’ 18 June 2006, A/HRC/5/1, para.58(b).

³⁹⁶ General Assembly, ‘Establishing the Human Rights Council and the Universal Periodic Review,’ 15 March 2006, A/RES/60/251, preamble.

United Nations and Universal Declaration of Human Rights, which apply to all States, the remaining obligations vary, depending on the human rights treaties a given State has ratified and whether the State concerned is party to an armed conflict.³⁹⁷ These differences will become more apparent from the second cycle onwards, as States will also be bound by accepted recommendations and voluntary commitments from previous cycles. As such, the interactive dialogue during each review must be tailored to the particular challenges that States encounter when striving to meet its specific set of human rights obligations.

2. Varying Human Rights Challenges Faced by Each State

Aside from being required to account for a different set of human rights obligations, each State experiences different economic, cultural, political and environmental factors that can influence the realisation of human rights at the ground level, including variant levels of development, high levels of internally displaced persons, high influxes of refugees, cultural relativism, and other factors.

States under review range in levels of development; developed countries have more resources available to meet human rights obligations than underdeveloped States. As such, States with fewer resources are likely to face greater financial challenges with implementing obligations relating to economic, social, and cultural rights, and/or civil and political rights. With gross domestic product per capita in 2009 ranging from \$82,978 in Qatar to \$290 in the Democratic Republic of the Congo,³⁹⁸ it is clear that there is a huge economic gap between the most developed and least developed States, which has a direct impact on a State's capacity to implement human rights obligations.³⁹⁹ Although States that lack resources are able to apply for assistance from

³⁹⁷ The core international human rights treaties are the *International Covenant on Civil and Political Rights* (and its Optional Protocols); the *International Covenant on Economic, Social and Cultural Rights* (and its Optional Protocol); the *Convention on the Rights of the Child* (and its Optional Protocols); the *Convention on the Elimination of All Forms of Racial Discrimination*; the *Convention on the Elimination of All Forms of Discrimination against Women*; the *Convention against Torture, Cruel, Inhuman and Degrading Treatment* (and its Optional Protocol); the *International Convention on the Protection of All Migrant Workers and Members of Their Families*; the *International Convention on the Rights of Persons with Disabilities*; and, the *Convention on Enforced Disappearances*.

³⁹⁸ International Human Development Indicators, 'GDP per capita in PPP terms,' 15 May 2011, available at: <http://hdrstats.undp.org/en/indicators/20206.html>. Figures shown are in US dollars.

³⁹⁹ Rachael Lorna Johnstone, 'Streamlining the Constructive Dialogue: Efficiency from States' Perspectives,' in M. Cherif Bassiouni and William A. Schabas, *New Challenges for the UN Human Rights Machinery* (Intersentia, Cambridge 2011), pp. 62-63.

the Voluntary Fund for Participation in the Universal Periodic Review, Voluntary Fund for Financial and Technical Assistance for the Implementation of the Universal Periodic Review or the Voluntary Fund for Technical Cooperation in the Field of Human Rights⁴⁰⁰ to meet accepted recommendations and voluntary commitments arising from the review process, these Funds do not offer sustainable assistance to implement long-term recommendations, because contributions are made on a voluntary basis and vary from year to year. This is discussed in greater detail in Chapter 8: Implementation of and Follow-up on Accepted Recommendations and Voluntary Commitments.

High levels of internally displaced persons and/or influx of refugees can also influence the type of human rights obligations affected States fail to meet, particularly when the given State lacks the resources required to address the situation in a manner that respects the human rights and freedoms of all the individuals living in its territory. An influx of refugees can pose major economic challenges, particularly when the State concerned is already struggling to meet the needs of its original populace and, in turn, affects a State's capacity to implement human rights obligations at the ground level.

During the review process, States under review have not overtly cited 'cultural relativism' as a reason for not applying international human rights standards; however, some States have made subtle reference to this within their national reports. For instance, in its national report, China states that it respects 'the principle of the universality of human rights' and recognises that the 'international community should respect the principle of indivisibility of human rights and attach equal importance to civil and political rights and economic, social and cultural rights as well as the right to development.'⁴⁰¹ However, China further notes that 'given differences in political systems, levels of development and historical and cultural backgrounds, it is natural

⁴⁰⁰ Human Rights Council, 'Establishment of Funds for the Universal Periodic Review Mechanism of the Human Rights Council,' 28 September 2007, A/HRC/RES/6/17. ; Office of the High Commissioner for Human Rights, 'Terms of Reference for the Voluntary Fund for Financial and Technical Assistance for the Implementation of the Universal Periodic Review,' 2009, p. 3, para. 14, available at: http://www.ohchr.org/Documents/HRBodies/UPR/TOR_TF_for_TC_assistance_UPR.pdf; Human Rights Council, 'Enhancement of Technical Cooperation and Capacity-building in the Field of Human Rights,' 17 October 2011, A/HRC/18/18.

⁴⁰¹ Human Rights Council, Working Group on the Universal Periodic Review, 'National Report Submitted in Accordance with Paragraph 15(a) of the Annex to Human Rights Council Resolution 5/1: China,' 10 November 2008, A/HRC/WG.6/5/CHN/1, pp. 5-6, para. 6

for countries to have different views on the question of human rights.⁴⁰² Whilst it is important to recognise the differences in political, economic, historic and cultural backgrounds, these factors do not affect the nature of international human rights standards or how they should be applied.

In subtly defending its culturally relative position on Sharia law, the Islamic Republic of Iran stated that ‘pressure or demands by other countries to accept and adopt certain Western standards of human rights will practically have negative impact on promotion of human rights’⁴⁰³ in response to what Iran described as an attempt by Western countries ‘to apply pressure and to advance certain ulterior motives.’⁴⁰⁴ The national report further notes that

it is necessary that by relying on the principle of cultural diversity, while respecting and avoiding political and cultural pressures, to pay attention to this point that any change or adjustments in these laws must come about as a result of dynamic national dialogue among our own authorities and civil society in the context of Islamic principles.⁴⁰⁵

The Democratic Republic of Korea also expressed a stance on the issue of cultural relativism, though not overtly identified as such:

The Government respects the principles of the Charter of the United Nations in respect of human rights and international human rights instruments, and maintains the principle of recognizing the universality of human rights, while taking due account of the political and economic systems of different countries and nations, and the level of their development, peculiarities, characteristics and diversity of their historical and cultural traditions... It is of the view that as human rights are guaranteed by sovereign States, any attempt to interfere in others’ internal affairs, overthrow the governments and change the systems on the pretext of human rights issues constitutes violations of human rights. In this sense, the DPRK holds that human rights immediately mean national sovereignty.⁴⁰⁶

⁴⁰² *Ibid.*

⁴⁰³ Human Rights Council, ‘National Report Submitted in Accordance with Paragraph 15(A) of the Annex to Human Rights Council Resolution 5/1: Islamic Republic of Iran,’ 18 November 2009, A/HRC/WG.6/7/IRN/1, p. 24, para. 130.

⁴⁰⁴ *Ibid.*, p. 24, para. 128.

⁴⁰⁵ *Ibid.*, p. 24, para. 130.

⁴⁰⁶ Human Rights Council, Working Group on the Universal Periodic Review, ‘National Report Submitted in Accordance with Paragraph 15(a) of the Annex to Human Rights Council Resolution 5/1: Democratic People’s Republic of Korea,’ 27 August 2009, A/HRC/WG.6/6/PRK/1, p. 4, para. 15.

It cannot be disputed that sovereign States are responsible for implementing their international human rights obligations, but again this does not change the nature of a given State's obligations, irrespective of how the State interprets those obligations based on political, economic, historic and cultural differences. Nevertheless, States are citing these factors to support their interpretation of the human rights obligations to which they are bound.

Each of the above-mentioned factors contributes to the types of human rights standards a State is willing or able to recognise, implement and maintain, which in turn affects the type of recommendations they will receive and accept, thus shaping the issues raised during the interactive dialogue. Against this backdrop alone, it would be difficult to ensure 'Equal attention [is] paid to all human rights.'⁴⁰⁷

3. Lost in Translation from Theory to Practice

In practice, each human right considered during Universal Periodic Review receives different levels of attention. This is evidenced by the variant number of recommendations per issue during the first eleven sessions of the first cycle⁴⁰⁸ (see Appendix C). The highest number of total recommendations concern the ratification of outstanding international human rights instruments, with 3714 recommendations constituting 19.66% of the total recommendations made between sessions 1 and 11. Women's rights (3306 recommendations/16.5%), the rights of the child (3053 recommendations/17.5%), torture and other cruel, inhuman and degrading treatment (1500 recommendations/7.94%), and justice (1362 recommendations/7.21%) were also among the top five issues raised.⁴⁰⁹ The top three issues raised (international instruments, women's rights and rights of the child) collectively accounted for over 50% of the total recommendations made, leaving the remaining 50% of recommendations dispersed among 51 other human rights identified by UPR Info.

Human rights such as the right to food (123 recommendations/0.65%), the right to housing (92 recommendations/0.49%), and the right to water (48 recommendations/0.25%) receive far less attention. The issue receiving the highest

⁴⁰⁷ Human Rights Council, 'Institution-building of the United Nations Human Rights Council,' 18 June 2006, A/HRC/5/1, para.58(b).

⁴⁰⁸ UPR Info, 'Statistics of UPR Recommendations,' 2010, available at: www.upr-info.org/database/statistics/

⁴⁰⁹ *Ibid.*

number of recommendations (international human rights instruments) received 30 times more recommendations than the right to food, 40 times more recommendations than the right to housing, and 78 times more recommendations than the right to water. The human rights issues receiving the least attention are those that affect everyone, and are essential to human survival. This huge disparity would be understandable if the rights to food, housing and water were already realised globally, but this is far from the truth.

According to the World Food Programme, ‘Hunger is the world’s No. 1 health risk. It kills more people every year than AIDS, malaria and tuberculosis combined...925 million people do not have enough to eat and 98 percent of them live in developing countries.’⁴¹⁰ Although 65% of the world’s population living in hunger live in Bangladesh, China, Ethiopia, India, Indonesia, Pakistan and the Democratic Republic of the Congo, these States received fewer than 10% of recommendations on the right to food.⁴¹¹ As for the right to housing, ‘over one billion people on the planet lack adequate housing... while around 100 million have no housing whatsoever.’⁴¹² The World Health Organization and the United Nations Children’s Fund (UNICEF) Joint Monitoring Programme for Water Supply and Sanitation reports that ‘780 million people still use unsafe drinking water sources.’⁴¹³ Access to food, shelter and water are necessities that each person requires in order to achieve the most basic standard of

⁴¹⁰ World Food Programme, ‘Hunger Stats,’ 2012, available at: <http://www.wfp.org/hunger/stats>

⁴¹¹ *Ibid.* China, Pakistan, and the Democratic Republic of the Congo received only one recommendation on the right to food each. China rejected the recommendation, whereas Pakistan and the Democratic Republic of Congo accepted theirs. India and Indonesia received no recommendations on the right to food. Ethiopia received five recommendations on the right to food, whereas Bangladesh received four; both States accepted all recommendations. See Human Rights Council, ‘Report of the Working Group on the Universal Periodic Review: China,’ 5 October 2009, A/HRC/11/25, para. 38, p. 9 (Mexico); Human Rights Council, ‘Report of the Working Group on the Universal Periodic Review: Pakistan,’ 4 June 2008, A/HRC/8/42, para. 106.35, p. 20 (Sudan); Human Rights Council, ‘Report of the Working Group on the Universal Periodic Review: Democratic Republic of the Congo,’ 4 January 2010, A/HRC/13/8, para. 94.54, p. 15 (Switzerland); Human Rights Council, ‘Report of the Working Group on the Universal Periodic Review: India,’ 23 May 2008, A/HRC/8/26; Human Rights Council, ‘Report of the Working Group on the Universal Periodic Review: Indonesia,’ 14 May 2008, A/HRC/8/23; Human Rights Council, ‘Report of the Working Group on the Universal Periodic Review: Bangladesh,’ 5 October 2009, A/HRC/11/18, para.33, p. 7 (Venezuela), para.39, p. 8 (Malaysia), para. 50, pp. 9-10 (Bhutan), para. 54, p. 10 (Viet Nam); Human Rights Council, ‘Report of the Working Group on the Universal Periodic Review: Ethiopia,’ 4 January 2010, A/HRC/13/17, paras. 97.68-69, pp. 19-20 (Algeria), para. 97.70, p. 20 (Pakistan), para. 97.72, p. 20 (Belgium), para. 73, p. 20 (Bangladesh).

⁴¹² Gustavo Capdevila, ‘More than 100 Million Homeless Worldwide,’ *IPS News*, 30 May 2005, available at: <http://ipsnews.net/news.asp?idnews=28086>

⁴¹³ UNICEF, ‘Water, Sanitation and Hygiene,’ 21 March 2012, available at: <http://www.unicef.org/wash/>

life; the number of recommendations made on these issues should be more representative of this.

Given that each State is accountable for a different set of human rights obligations, depending on its ratification of the international human rights instruments, and that each State is faced with a unique set of challenges in meeting its obligations, the issues raised during the review process must necessarily vary from State to State. The resource limitations imposed on the review process render it impossible to cover every human rights issue in every State under review in any sort of depth; therefore, it is more practical to cover the most pressing issues in a given State so as to foster the greatest improvement in meeting its international human rights obligations. However, as demonstrated above, the unjustifiably vast disparities between the top three human rights issues raised and the remaining issues cannot be explained by the variance in obligations between States, the different challenges States face in meeting these obligations, or the need to prioritise issues for each State due to resource limitations.

Chapter 6

State and Regional Behaviour during Universal Periodic Review

This chapter examines the nature of State and regional participation during Universal Periodic Review, using quantitative data to identify trends in participation that have developed during the first cycle of review. Qualitative data collected from the review is used to evaluate the quality of State participation and analyse whether politicisation influences the review process. A number of positive trends emerged from the first cycle of review. Not only did the first cycle boast 100% participation, the majority of participating States accepted the majority of recommendations. Specific examples and statistics are provided in this chapter.

1. State Participation

Before examining quantitative data regarding State participation during the first cycle of the Universal Periodic Review process, it is important to understand the categories of States involved in (or excluded from) the process and how it influences the role a given State. The term ‘Universal’ Periodic Review is misleading, because only United Nations Member States are reviewed, whereas Permanent Observer States to the United Nations (the Holy See and the State of Palestine)⁴¹⁴ are not. However, Observer States are permitted to take the floor to make statements and recommendations during the interactive dialogue phase of the review process and tend to make more recommendations per State than in any regional category. It is also interesting to note that although Palestine is not subject to review, Israel received five recommendations to improve the realisation of human rights standards in the Palestinian territories, following the example the treaty bodies have set by holding Israel accountable for the human rights situation in Palestine.

During the first cycle of review, there were instances where time limits prevented all interested States from making statements, since a maximum of 60 States were permitted to take the floor during each review. From sessions 1 to 11 of the first cycle, 157 States made 18,888 recommendations (see Chart 1 below). The top five

⁴¹⁴ General Assembly, ‘Status of Palestine in the United Nations,’ A/RES/67/19, 29 November 2012, adopted with 9 votes against and 41 abstentions.

recommending States were Canada (816 recommendations/4.32% of total recommendations), Norway (636 recommendations/3.37% of total recommendations), France (621 recommendations/3.29% of total recommendations), Mexico (603 recommendations/3.19% of total recommendations) and Brazil (603 recommendations/3.19% of total recommendations). Whilst these figures are quite promising, 39 of 192 States did not make any recommendations.⁴¹⁵ Malta, Monaco, El Salvador, Swaziland, and Iceland made one recommendation each (or less than 0.01% of total recommendations). Thirty-one States made fewer than 10 recommendations each.⁴¹⁶ The median number of recommendations among recommending States is 46, whereas the average is 120 among recommending States during the first eleven sessions of the first cycle. These figures reveal that there is vast disparity between States making the highest number of recommendations and those that made the fewest, with the African regional group being over-represented in the latter category.

During this same period, the median number of overall recommendations received is 114, which is only slightly higher than the average number of recommendations received per State (108). The five States receiving the highest number of recommendations are the United States (280 recommendations/1.48% of total recommendations), Iran (212 recommendations/1.12% of total recommendations), Sudan (204 recommendations/1.08% of recommendations), Myanmar (197 recommendations/1.04% of total recommendations) and Nepal (193 recommendations/1.02% of total recommendations). Ecuador (12), Bahrain (12), Indonesia (13), Brazil (15), and Morocco (16) received the fewest number of recommendations. Although the disparities between the recommendations received can be interpreted as an indication of politicisation, the States receiving the fewest

⁴¹⁵ These 39 States are: Andorra, Antigua & Barbuda, Bahamas, Belize, Comoros, Dominica, Eritrea, Fiji, Gambia, Grenada, Guinea, Guinea Bissau, Guyana, Kenya, Kiribati, Liberia, Malawi, Marshall Islands, Micronesia, Mongolia, Montenegro, Nauru, Palau, Papua New Guinea, San Marino, Sao Tome & Principe, Seychelles, Sierra Leone, Solomon Islands, South Sudan, St Kitts & Nevis, St Lucia, St Vincent & the Grenadines, Suriname, Togo, Tonga, Turkmenistan, Tuvalu, Vanuatu.

⁴¹⁶ Iceland (1), Swaziland (1), El Salvador (1), Monaco (1), Malta (1), Cape Verde (2), Central African Republic (2), Equatorial Guinea (2), Rwanda (2), Madagascar (3), Barbados (3), Mali (3), Namibia (3), Mozambique (3), Samoa (4), Lesotho (4), Brunei Darussalam (5), Zambia (5), Georgia (6), Burundi (6), Macedonia (6), Ethiopia (7), Tanzania (7), Somalia (8), Estonia (8), Liechtenstein (8), Cameroon (8), Jamaica (9), Dominican Republic (9), Unknown (9), Paraguay (9), Benin (10). This information is drawn from UPR Info, available at: www.upr-info.com. In a personal communication dated 24 May 2012, UPR Info indicated that the 'unknown' State refers to 9 recommendations (out of 13) that the organisation has 'not been able to link with a State during Indonesia's Universal Periodic Review.'

number of recommendations were reviewed during the first session of the first cycle of review, when the process was still relatively new for most participants. This disparity suggests that Universal Periodic Review does not meet a principle set out by the Human Rights Council to ‘ensure universal coverage and equal treatment of all States.’⁴¹⁷

Whilst 39 States did not participate in the first eleven sessions of the first cycle,⁴¹⁸ State participation increased significantly from the first session to the eleventh session, with nearly five times as many recommendations being made in session eleven as compared to the first session (see Chart 1 below).⁴¹⁹ As such, States that were reviewed during the first three sessions will have received fewer recommendations than States reviewed in subsequent sessions, most likely because States were still becoming accustomed to the process and how to prepare for it. The twenty States that received the fewest number of recommendations overall were reviewed during the first two sessions.⁴²⁰ From the sixth session onwards, the number of recommendations did not fall below 2000 recommendations and this trend will likely continue into the second cycle and onwards.

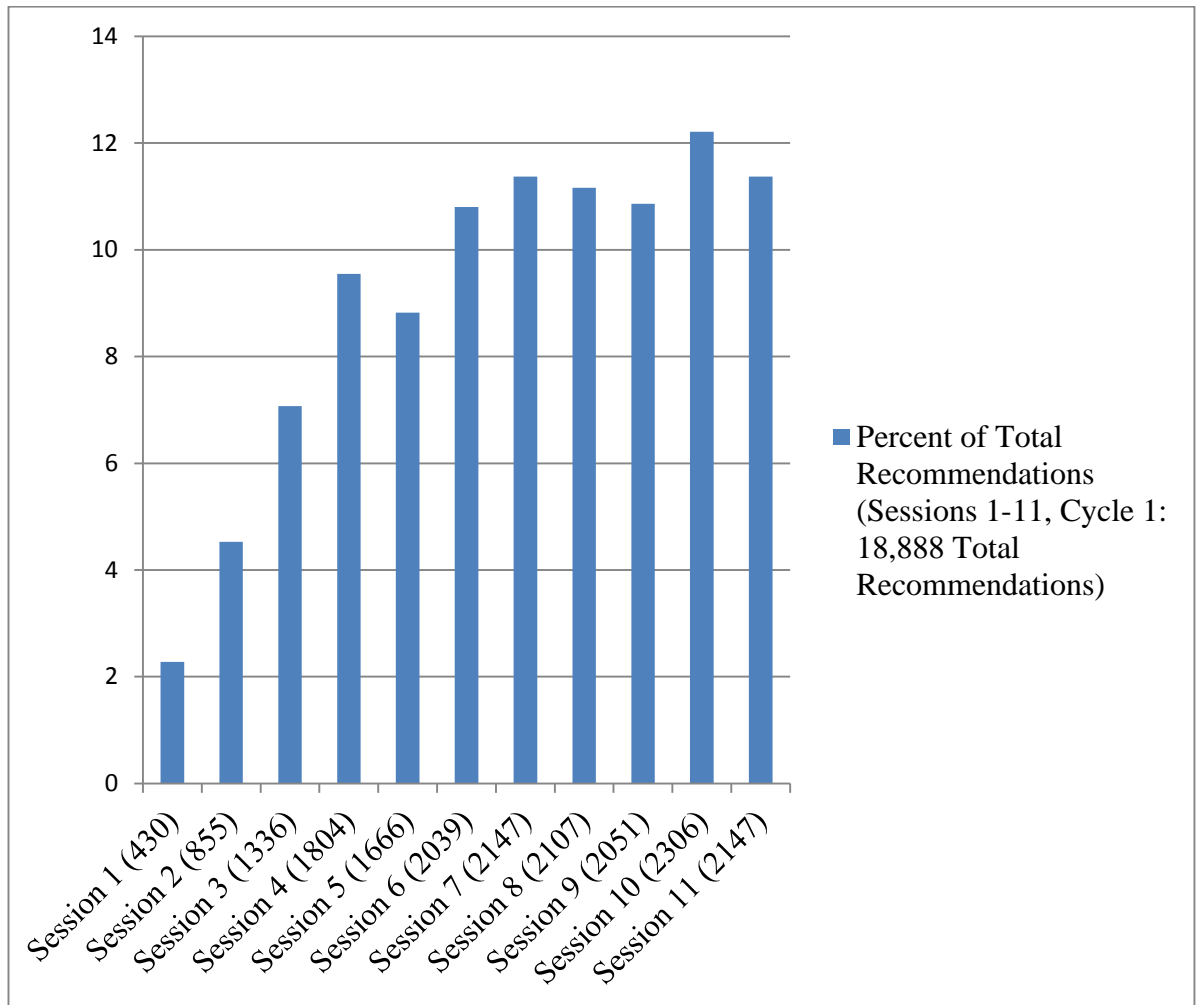
⁴¹⁷ Human Rights Council, ‘Institution-building of the United Nations Human Rights Council,’ 18 June 2006, A/HRC/5/1, p. 2, para. 3(c).

⁴¹⁸ UPR Info, ‘Statistics of UPR Recommendations,’ 2012, available at: <http://www.upr-info.org/database/statistics/>

⁴¹⁹ *Ibid.*

⁴²⁰ These States are: Ecuador (12), Bahrain (12), Indonesia (13), Brazil (15), and Morocco (16), Finland (17), Philippines (24), Tunisia (28), South Africa (29), India (30), Poland (33), the United Kingdom (35), Benin (35), France (36), Algeria (36), Czech Republic (37), Zambia (38), Peru (39), Argentina (41), Gabon (41), and Ukraine (44).

Chart 1 Percentage of Recommendations per Session (Sessions 1-11, Cycle 1:
18,888 Total Recommendations



The number of accepted recommendations, as compared to those that are rejected, receive a general or no response, is a critical aspect of State participation in the review process. States have the discretion on how to respond to recommendations that arise during the Universal Periodic Review process. States can choose to accept or reject recommendations, but there were also instances during the first cycle where States provided no clear position or offered a general response, did not respond or provided other responses, including that the recommendation is accepted in part, noted, already implemented or being implemented.⁴²¹ In the UPR Info database of recommendations, there are only four types of categories for State responses to all recommendations, including accepted recommendations, rejected recommendations, general response, and no response. It is unclear how recommendations that the State considers inapplicable or claims to have already implemented are categorised within the database, which yields the results shown in Chart 6 below.

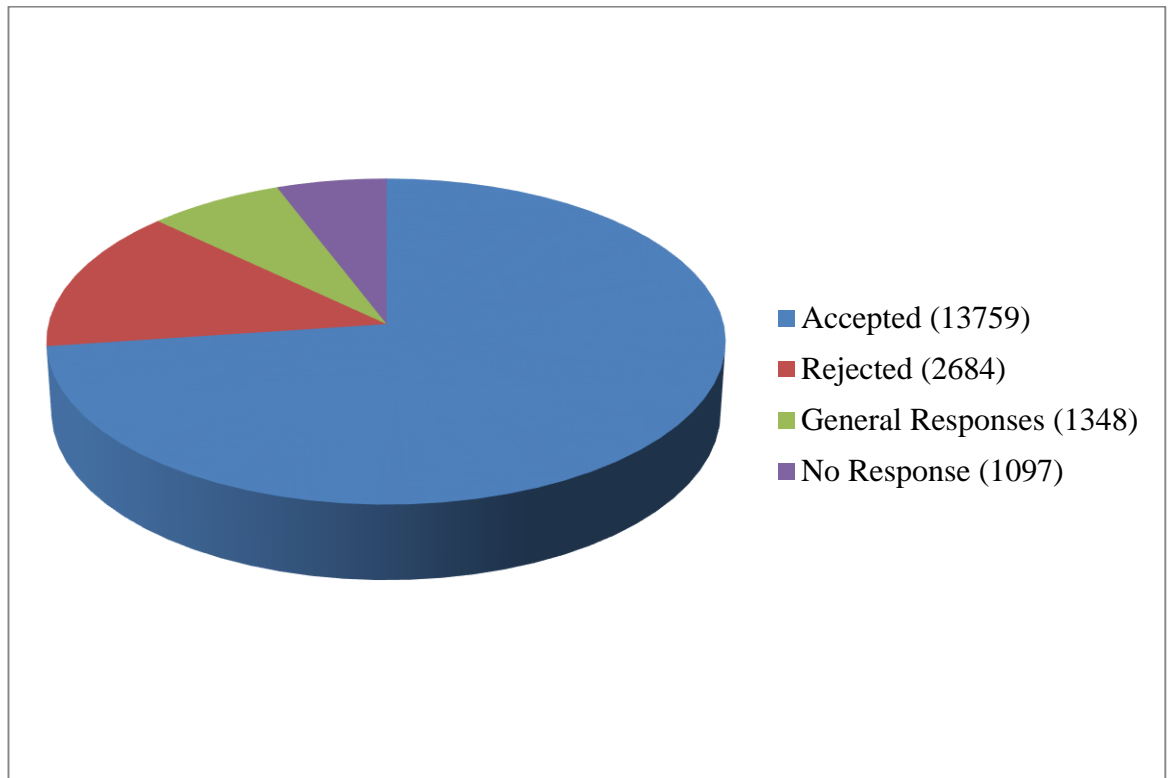
The majority of recommendations during the first eleven sessions of the first cycle of review were accepted (13759 recommendations or 73%). Of the remaining 27% of recommendations, 2684 were rejected (14%), 1348 received a general response (7%) and 1097 received no response (6%).⁴²² Overall, these trends are quite positive, as they suggest that most States are willing to accept and commit towards implementing non-mandatory recommendations. Although these figures would be slightly reduced if statistics were available on the number of recommendations that were not applicable or that the State has already implemented, they suggest that in general States are far more willing than not to accept recommendations stemming from the review process. As discussed earlier, the nature of the recommendations that were rejected or received a general response or no response could reveal whether States are willing to fully cooperate with the process and invest the requisite time, resources and effort into improving the human rights situation at the ground level in line with one of the objectives of Universal Periodic Review.⁴²³

⁴²¹ UPR Info, 'Methodology – Responses to Recommendations,' 2010, pp. 1-2, available at: www.upr-info.org/IMG/...Methodology_Responses_to_recommendations.pdf

⁴²² UPR Info, 'Statistics of UPR Recommendations,' 2012, available at: www.upr-info.org/database/statistics/

⁴²³ Human Rights Council, 'Institution-building of the United Nations Human Rights Council,' 18 June 2006, A/HRC/5/1, p. 3, para. 4(a).

Chart 2 Responses to Recommendations (Sessions 1-11, Cycle 1: 18,888 Total Recommendations)



If a State issues a general response or fails to respond, in effect, it has rejected the given recommendation, as it will not result in its implementation. When States fail to provide clear responses to the recommendations they receive, it masks their position on the recommendations issued and skews the statistics on their participation. In fulfilling their obligation to fully cooperate with the Universal Periodic Review process, States are now required to provide clear responses to recommendations, stating whether they are rejected or accepted, within a set period following their reviews, preferably prior to the Working Group phase of the review process.⁴²⁴

State rejection of certain recommendations can be appropriate when those recommendations are ‘irrelevant and contrary to international human rights law.’⁴²⁵ At the same time, States have the discretion to reject recommendations that have the potential to influence positive change in the situation of human rights at the ground level, which hinders the realisation of the purpose of Universal Periodic Review, particularly when States claim that relevant recommendations are irrelevant. For instance, during its first review, Iran rejected a number of recommendations it considered ‘to be irrelevant to the internal situation of the country,’⁴²⁶ including seven recommendations regarding Iran’s cooperation with the work of Special Rapporteurs.⁴²⁷ Commenting on the outcome of the review, ‘Norway could not accept the refusal to invite the Special Rapporteur on torture, since the prohibition against torture was absolute and Iran had issued a standing invitation. It called on Iran to implement its human rights commitments and obligations.’⁴²⁸ Sharing Norway’s concern, the International Federation for Human Rights Leagues

⁴²⁴ In response to a number of States that failed to provide clear responses to recommendations received during the first cycle of review, the working group suggested that in future cycles, States under review must provide a clear response (preferably in writing) to the recommendations received before the Council plenary. Human Rights Council, ‘Review of the Work and Functioning of the Human Rights Council,’ 12 April 2011, A/HRC/16/21, para.16; Human Rights Council, ‘Institution-building of the United Nations Human Rights Council,’ 18 June 2006, A/HRC/5/1.

⁴²⁵ UPR Info, ‘Analytical Assessment of the Universal Periodic Review: 2008-2010,’ October 2010, Budapest, p. 15.

⁴²⁶ Human Rights Council, ‘Report of the Working Group on the Universal Periodic Review: Islamic Republic of Iran: Addendum,’ 3 June 2010, A/HRC/14/12/Add.1, p. 6, para. 27.

⁴²⁷ Human Rights Council, ‘Report of the Working Group on the Universal Periodic Review: Islamic Republic of Iran,’ 15 March 2010, A/HRC/14/12, p. 5, para 5 (United States of America); para. 6 (Australia); para. 7 (New Zealand); para. 8 (France); para. 9 (The Netherlands), para. 10 (United Kingdom), para. 11 (France).

⁴²⁸ Human Rights Council, ‘Report of the Human Rights Council on its Fourteenth Session,’ 23 October 2012, A/HRC/14/37, p. 123, para. 506.

regretted that Iran had denied human rights violations during its review. They expressed concern over Iran's rejection of 28 recommendations as being 'inconsistent' with Council resolution 5/1 and/or 'not internationally recognized human rights.' The recommendation referred to special procedures visits and protection of minorities, which were based on Iran's pledges and international obligations.⁴²⁹

Overall, however, State participation in the review process is rather promising. All 192 United Nations Member States that were to be reviewed during the first cycle underwent a formal review.⁴³⁰ A majority of reviewing States have issued recommendations, and States under review have likewise accepted the majority of recommendations posed to them. However, there is always room for improvement. States that have failed to issue recommendations or made comparatively few recommendations during the first cycle should enhance their participation in the review process by engaging in the interactive dialogue phase of Universal Periodic Review and making relevant statements, including in collaboration with other States to issue joint statements. Collaboration among States is crucial to ensuring that a high number of similar recommendations do not dilute the review process by necessitating reduced speaking time per participating State to accommodate all speakers, thus reducing the substantive nature of each statement and causing overlap.

2. Regional Participation

During the first three sessions, more States participated from the African group (33 States) than the Western European and Other group (24 States).⁴³¹ The latter made the highest number of statements (23.3) per participating State, with 560 statements in total during the first three sessions, whereas the African group made 10.5

⁴²⁹ *Ibid.*, p. 126, para. 520.

⁴³⁰ Human Rights Council, 'Support of the Human Rights Council for the Recovery Process in Haiti after the Earthquake of 12 January 2010: A Human Rights Approach,' 28 January 2010, A/HRC/S-13/1, p. 2, para. 10. Haiti was unable to undergo its review when scheduled (in May 2010) due to the devastating earthquake in Haiti on 12 January 2010, as country's resources needed to be redirected towards emergency disaster relief. Haiti's review was rescheduled and took place in October 2011. The second cycle of review, however, may not achieve the same success rate for participation after Israel failed to submit its national report and attend its own review originally scheduled for 29 January 2013.

⁴³¹ UPR Info, 'State Participation in the UPR Working Group: Session 1,' 2009, available at: www.upr-info.org/IMG/pdf/State_participation_S1.pdf; UPR Info, 'State Participation in the UPR Working Group: Session 2,' 2009, available at: www.upr-info.org/IMG/pdf/State_participation_S2.pdf; UPR Info, 'State Participation in the UPR Working Group: Session 3,' 2009, available at: www.upr-info.org/IMG/pdf/State_participation_S3.pdf; UPR Info, 'State Participation in the UPR Working Group: Session 1, 2 and 3,' 2009.

recommendations per participating State, totalling 346 recommendations (see Chart 2 below).⁴³² The Permanent Observer States to the United Nations had the highest participation rate (at 100%); two States made 27 recommendations and an average of 13.5 recommendations per State.⁴³³ Twenty-two States from the Latin American and Caribbean region made 256 recommendations.⁴³⁴ Thirty-one States from the Asian region participated, making 441 statements; this region had the fewest percentage of participating States from its regional group at 66.7%.⁴³⁵ Fourteen States from the Eastern European region participated and collectively made 252 statements for an average of 18 statements per participating State. The overall average is 15 statements per participating State in each region.⁴³⁶

⁴³² *Ibid.*

⁴³³ *Ibid.*

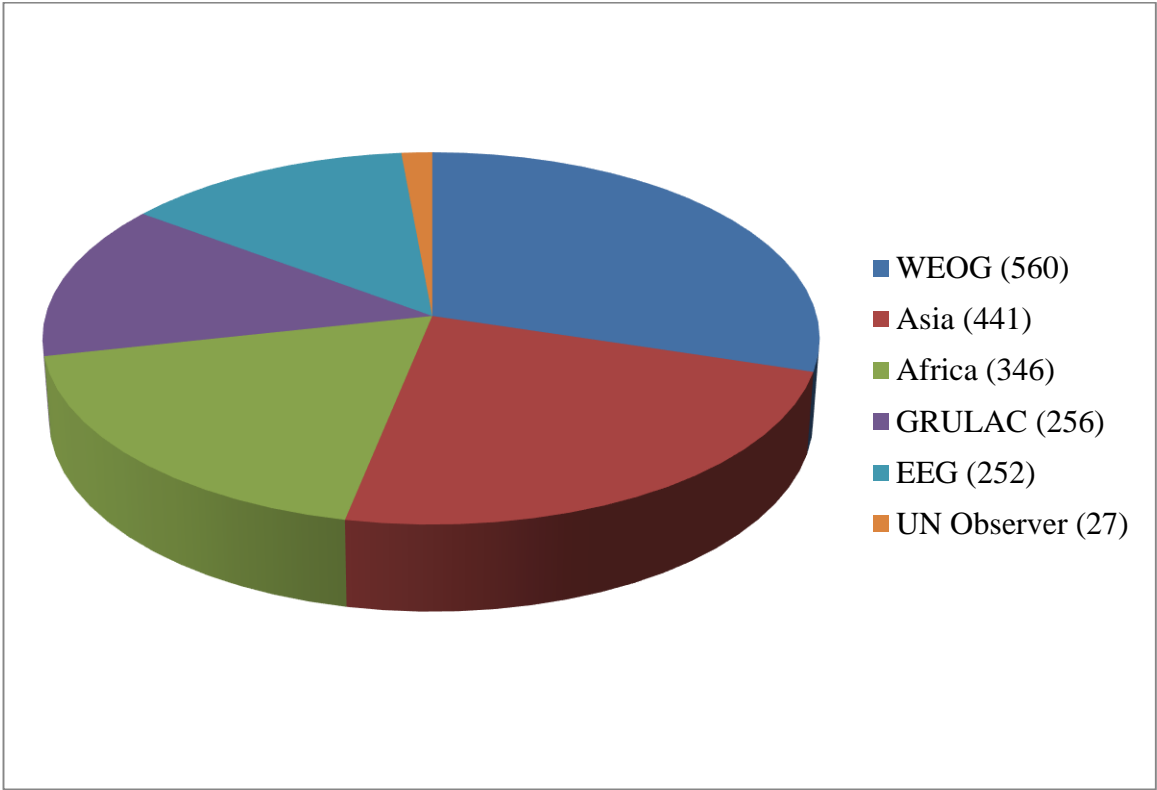
⁴³⁴ *Ibid.*

⁴³⁵ *Ibid.*

⁴³⁶ *Ibid.*

Chart 3

Number of Recommendations Issued per Regional Group (Sessions 1-3, Cycle 1: 1882 Total Recommendations)



During the fourth session, UN Observers made the highest number of statements, (10) per participating State, and again boasted a 100% participation rate with a total of 20 statements.⁴³⁷ The Eastern European group made the fewest number of statements (4.8) per participating State, with 92 recommendations, although it boasted the second highest rate of participation among States within its regional group (82.6%) after the UN Observer group.⁴³⁸ For the first time during the first cycle of review, the Western European and other States group is not most active, opening the floor for other groups to enhance their level of participation. The Western European and other States group followed the European group in terms of the percentage of participating States from its region (with 75.9%); twenty-two States participated from its region, which made 189 statements in total.⁴³⁹ Thirty-four States from the Asian group made 270 statements, rendering a 63% participation rate among States from its regional group, with 7.9 statements per participating State.⁴⁴⁰ Twenty States (or 60.6% of States in this regional group) participated from the Latin America and Caribbean regional group, making an average of 5 statements per State, and 100 statements in total.⁴⁴¹ The African group had a 50.8% rate of participation within its group, with 31 recommending States making 185 statements for an average of 6 statements per participating State.⁴⁴² Whilst the Asian and African groups are not at the forefront in terms of highest percentage of participating States, the number of statements made by both regional groups has doubled since the previous session.⁴⁴³

⁴³⁷ UPR Info, 'State Participation in the UPR Working Group: Session 4,' 2009, available at: www.upr-info.org/IMG/pdf/State_participation_S4.pdf

⁴³⁸ *Ibid.*

⁴³⁹ *Ibid.*

⁴⁴⁰ *Ibid.*

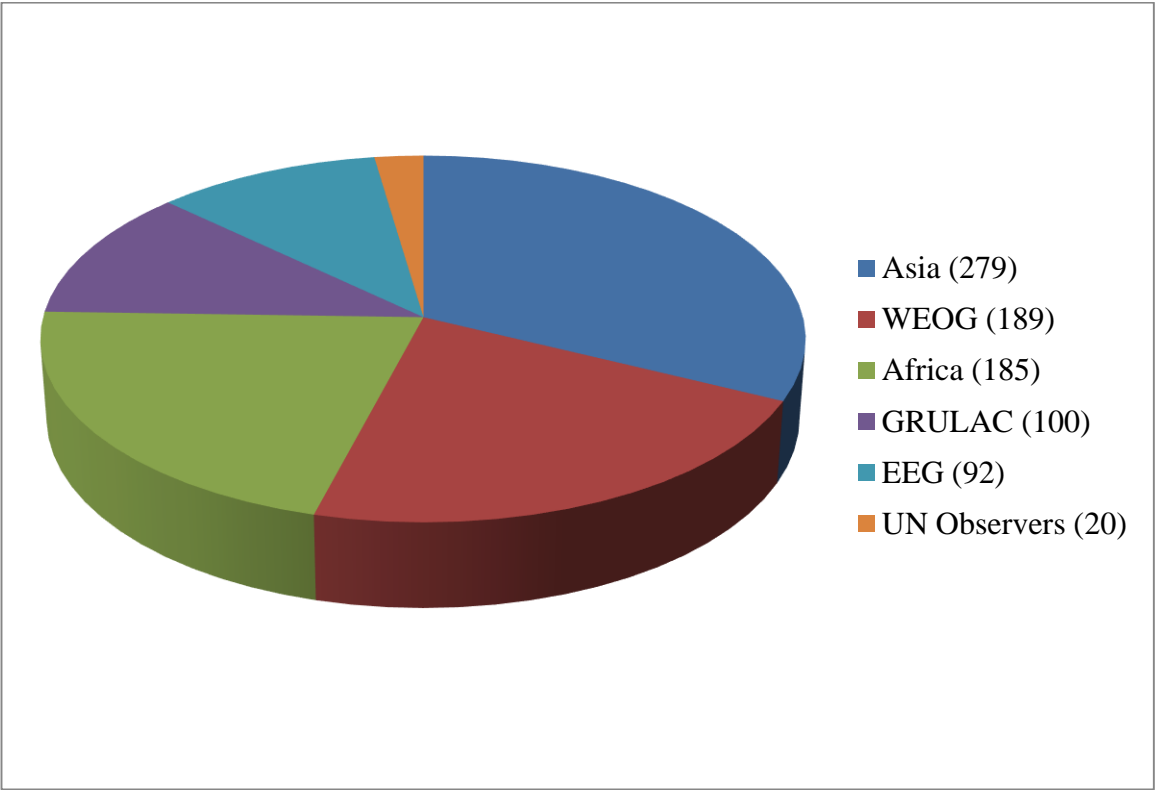
⁴⁴¹ *Ibid.*

⁴⁴² *Ibid.*

⁴⁴³ *Ibid.*

Chart 4

Number of Recommendations Issued per Regional Group (Session 4, Cycle 1: 856 Total Recommendations)



From sessions one to eleven of the first cycle, the Western European and other group made the highest number of recommendations at 7694 or 40.73% of the total recommendations, which is 11% higher than during the first three sessions, even though this region has the second lowest number of States (29).⁴⁴⁴ By implication, this means that all other regions had a lower margin of participation than they had during the first three sessions. Although it seems positive that the Western European and other group is so keen to participate in the review process, it meant that fewer States from other regions were able to take the floor in the first cycle, given that the number of States able to participate during any given review was limited to a maximum of 60 States. Since the speakers' list was drawn up based on a first come first served basis, perhaps more States from other regions would have participated had the Western European and other group not asserted their place in line first. The second cycle onwards will better 'ensure equal treatment of all States,'⁴⁴⁵ as the Working Group on the Universal Periodic Review amended the modalities for the speakers list by reducing individual speaking times, as necessary, in order to accommodate all States that wish to make a statement during the interactive dialogue.⁴⁴⁶

The following four regional groups had a marginal difference among them of no more than five percent from the second highest regional group (the Latin American and Caribbean group at 3130 recommendations or 16.57%) to the lowest regional group (Africa with 2231 recommendations or 11.81%) overall.⁴⁴⁷ The observer group, consisting of only two States, made a total of 170 recommendations (or 85 recommendations per State), but accounted for only 0.9% of the total recommendations made).⁴⁴⁸

⁴⁴⁴ UPR Info, 'Statistics of UPR Recommendations,' 2012, available at: www.upr-info.org/database/statistics/

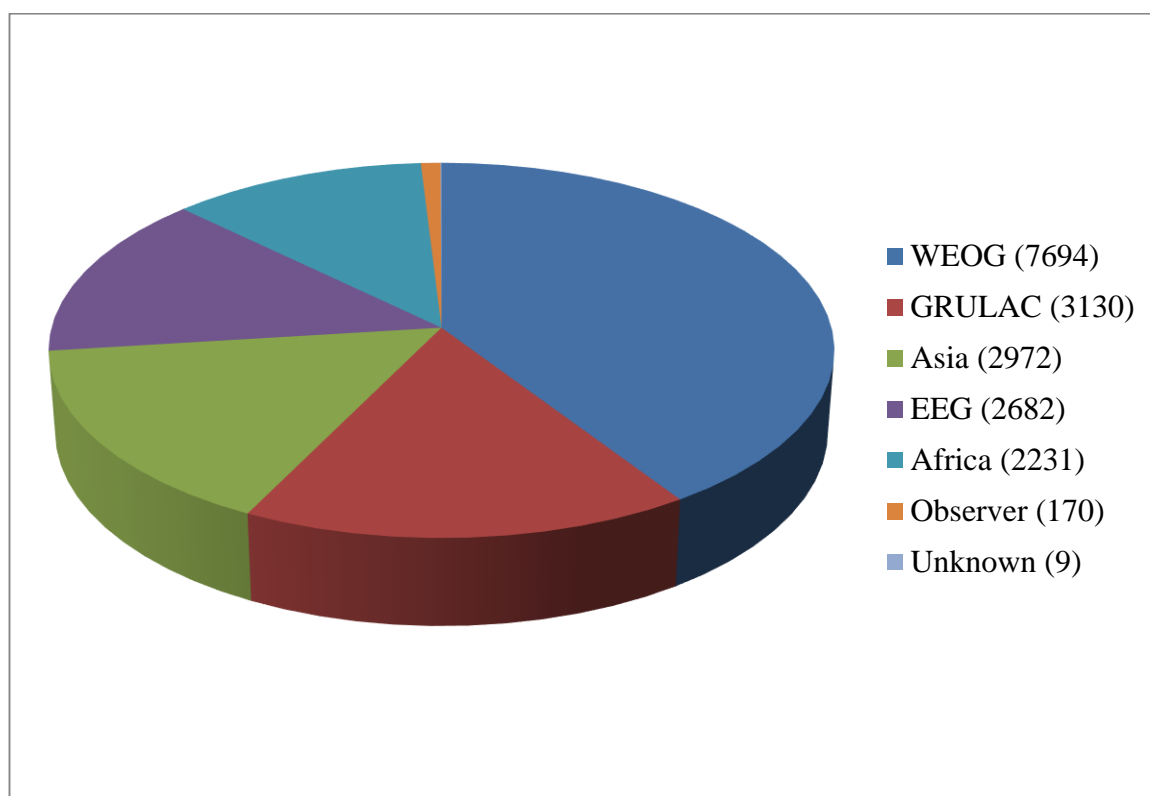
⁴⁴⁵ Human Rights Council, 'Institution-building of the United Nations Human Rights Council,' 18 June 2006, A/HRC/RES/5/1, p. 2, para. 3(c).

⁴⁴⁶ Human Rights Council, 'Review of the Work and Functioning of the Human Rights Council,' 12 April 2011, A/HRC/RES/16/21, Appendix.

⁴⁴⁷ UPR Info, 'Statistics of UPR Recommendations,' 2012, available at: www.upr-info.org/database/statistics/

⁴⁴⁸ *Ibid.*

Chart 5 Number of Recommendations Issued per Regional Group (Sessions 1-11, Cycle 1: 18,888 Total Recommendations)



The regional composition of the most active and least active States echoes the overall statistics for regional participation. Among the twenty recommending States that made the fewest recommendations, 60% are from the African regional group,⁴⁴⁹ with the Asia regional group, Latin American and Caribbean group, Western European and Other group, and the Eastern European group each representing 10%.⁴⁵⁰ As mentioned earlier, 39 States did not make recommendations during the first eleven sessions of the first cycle of review.⁴⁵¹ Among these 39 States, 35.9% are from the African group,⁴⁵² 30.7% from the Asian group,⁴⁵³ 25.6% of the Latin American and Caribbean group,⁴⁵⁴ 5% from the Western European group⁴⁵⁵ and 2.5% from the Eastern European group.⁴⁵⁶ Of the top 20 recommending States, 55% are from the Western European and Other group,⁴⁵⁷ 20% each for the Latin American and Caribbean group⁴⁵⁸ and Eastern European group,⁴⁵⁹ 5% from the African group⁴⁶⁰ and none are from the Asian group. These statistics generally reflect the overall findings that the Western European group was most active, whereas the African group was least active in terms of the number of recommendations advanced by each regional group. This could be explained by varying levels of access to resources used to participate in the review,

⁴⁴⁹ These States are Burundi, Cape Verde, Central African Republic, Equatorial Guinea, Ethiopia, Lesotho, Madagascar, Mozambique, Namibia, Rwanda, Swaziland, and Zambia.

⁴⁵⁰ These States are Brunei Darussalam and Samoa (Asia group), Barbados and El Salvador (Latin American and Caribbean group), Iceland and Malta (Western European and Other group), Macedonia and Georgia (Eastern European group).

⁴⁵¹ These 39 States are: Andorra, Antigua & Barbuda, Bahamas, Belize, Comoros, Dominica, Eritrea, Fiji, Gambia, Grenada, Guinea, Guinea Bissau, Guyana, Kenya, Kiribati, Liberia, Malawi, Marshall Islands, Micronesia, Mongolia, Montenegro, Nauru, Palau, Papua New Guinea, San Marino, Sao Tome & Principe, Seychelles, Sierra Leone, Solomon Islands, South Sudan, St Kitts & Nevis, St Lucia, St Vincent & the Grenadines, Suriname, Togo, Tonga, Turkmenistan, Tuvalu, Vanuatu.

⁴⁵² The States from the African regional group that did not make any recommendations during the first eleven sessions of the first cycle are: Comoros, Eritrea, Gambia, Guinea, Guinea-Bissau, Kenya, Eritrea, Gambia, Guinea, Guinea-Bissau, Kenya, Liberia, Malawi, Sao Tome & Principe, Seychelles, Sierra Leone, South Sudan, Togo and Tonga.

⁴⁵³ The States from the Asian regional group are Fiji, Kiribati, Marshall Islands, Micronesia, Mongolia, Nauru, Palau, Papua New Guinea, Solomon Islands, Turkmenistan, Tuvalu and Vanuatu.

⁴⁵⁴ The States from the Latin American and Caribbean group are Antigua & Barbuda, Bahamas, Belize, Dominica, Grenada, Guyana, Saint Kitts & Nevis, Saint Lucia, St. Vincent & the Grenadines and Suriname.

⁴⁵⁵ These States are Andorra and San Marino.

⁴⁵⁶ Montenegro was the only State from the Eastern European group that did not make any recommendations.

⁴⁵⁷ These States are Canada, France, Germany, Italy, Netherlands, Norway, Spain, Sweden, Switzerland, United Kingdom and the United States.

⁴⁵⁸ These States are Argentine, Brazil, Chile and Mexico.

⁴⁵⁹ These States are the Austria, Azerbaijan, Czech Republic and Slovenia.

⁴⁶⁰ Algeria was the only State from the African group that was among the twenty recommending States that made the highest number of recommendations.

although a Voluntary Fund for Participation in Universal Periodic Review is available to cover the costs associated with sending a delegation to Geneva to participate in the review process.⁴⁶¹

3. Quality of Participation

Apart from examining the number of recommendations arising from the interactive dialogue, the quality of participation can be measured by examining the State consultation process, cooperation with non-governmental organisations, collaboration with non-governmental organisations, quality of delegations that participate in the review process on behalf of States, and willingness to accept and implement recommendations.

If the Universal Periodic Review process is to instil real change in improving the human rights situation at the ground level, seeking input from those directly affected is an integral stage of the process. In order to ensure the broadest possible level of participation, States should conduct consultations that are widely publicised among members of the public and relevant stakeholders and that such consultations be accessible and inclusive. When publicising upcoming consultations, the State should provide information explaining the Universal Periodic Review process. Civil society should be made aware of its role and that it is able to engage in the process by bringing key human rights issues to the forefront of discussions and working with the State under review to ensure these issues are addressed in the national report and during the interactive dialogue. States are vulnerable to criticism when they fail to hold accessible public consultations. The Native Women's Association of Canada, for instance, criticised Canada for its 'failure to hold consultations [and that this] was not made clear in Canada's [national] report.'⁴⁶² The Centre for Equality Rights in Accommodation further reaffirmed that 'There was no consultation with civil society or Indigenous Peoples and representative organizations prior to the submission of Canada's Report on December 22nd, 2008. It was only after the submission of Canada's report that meetings were held with civil society and Indigenous

⁴⁶¹ Additional information regarding the Fund and its perimeters can be found in Section 1: State Capacity to Implement Recommendations in Chapter 8: Implementation of and Follow-up on Accepted Recommendations and Voluntary Commitments.

⁴⁶² Native Women's Association of Canada, 'Canada's Record on Indigenous Rights Questioned at the UN Human Rights Council,' available at: <http://www.nwac.ca/media/release/04-02-09>

representatives in Winnipeg, Vancouver, Ottawa, Toronto and Halifax.’⁴⁶³ Other States criticised for failing to hold broad, accessible consultations are the Russian Federation,⁴⁶⁴ Bahrain,⁴⁶⁵ and India.⁴⁶⁶

State participation in the review process can also be measured by its level of cooperation with relevant stakeholders. Stakeholders and non-governmental organisations can continue contributing to the review process following national consultations by submitting stakeholder reports and lobbying States to address key human rights issues. By consulting and collaborating with experts and practitioners in the field of human rights, States are able to make better informed recommendations during the interactive dialogue. Involving human rights experts could enhance the degree of change that stems from the outcome of the review and help mitigate the level of politicisation, which is discussed in sub-section 4 of this chapter.

The quality of delegations that represent the State under review also reflects, to a degree, the quality of State participation in the review process and can be measured by examining the qualifications of individuals who comprise the delegations, the size of delegations, and whether there is a gender balance among the delegates.

⁴⁶³ Centre for Equality Rights in Accommodation, ‘The Universal Periodic Review of Canada: Submission to Senate Committee on Human Rights,’ 30 March 2009, p. 1.

⁴⁶⁴ Indigenous Portal, ‘UPR, Review of the Russian Federation,’ 10 February 2009, available at: <http://www.indigenousportal.com/es/Politics/UPR-review-of-the-Russian-Federation.html> ‘RAIPON, the umbrella organization of indigenous peoples in Russia considers that the Russian Federal Government has failed to conduct an adequate and broad national consultation process as required under the UPR.’

⁴⁶⁵ Human Rights Council, ‘Written Statement Submitted by Cairo Institute for Human Rights Studies (CIHRS), a Non-Governmental Organization in Special Consultative Status,’ 28 May 2008, A/HRC/8/NGO/42, p. 2, para. 3. ‘The Bahrain authorities failed to consult with ten highly active human rights groups, including the Bahrain Centre for Human Rights...despite a letter sent by these groups...appealing to the government to include them in the consultation process.’ There were also complaints that the consultations held ‘were for information not consultation, and that their comments had no reflection in the final national report.’

⁴⁶⁶ Working Group on Human Rights in India and the UN, ‘Consultative Workshop on the UPR Process,’ 4 April 2011, New Delhi, p. 2. The Working Group on Human Rights stated that ‘there was no broad consultation process to prepare India’s first report to the UPR.’ The only consultation took place in Delhi, the national capital, where the meeting was organised with short notice to relevant stakeholders. ‘The government prepared no documentation in advance and there was no fixed agenda to guide the content.’

During sessions 1-6 of the first cycle of review, highly qualified individuals, such as Foreign Affairs or Justice Ministers,⁴⁶⁷ Vice Presidents,⁴⁶⁸ and Ambassadors and Representatives to the Human Rights Council,⁴⁶⁹ led the majority of delegations. During this same period, several States sent large delegations to represent them during the review process: Those representing Indonesia, the United Kingdom, Poland, South Korea, Switzerland, Romania, Serbia and Yemen, for example, comprised over 20 individuals. The Mexican and Vietnamese delegations totalled 29. Those of Bahrain and the Philippines numbered over 30, and the Chinese delegation 43. However, the size of a delegation can also be predicated on financial capacity to send individuals to Geneva to participate in the review process. For instance, single individuals represented the Comoros and Dominica delegations, four individuals represented Vanuatu and five represented Tuvalu.⁴⁷⁰

The gender balance of those who represent State delegations during the review process is less promising, particularly when considering that Human Rights Council resolution 5/1 requires States to ‘fully integrate a gender perspective’ during the review process.⁴⁷¹ The composition of State delegations should reflect this gender perspective. Whereas the ratio of men to women was equal for the New Zealand delegation,⁴⁷² the delegations of Chad and Ethiopia were exclusively comprised of men.⁴⁷³ The Philippines, Mexico, Germany, the Former Yugoslav Republic of Macedonia, Serbia and Albania had a near-equal number of men and women representing their delegations.⁴⁷⁴ More men than women represented a number of

⁴⁶⁷ International Federation of Action by Christians for the Abolition of Torture, ‘Universal Periodic Review: An Ambivalent Exercise – Report & Recommendations April 2008-December 2009,’ 24 December 2009, p. 14. Ministers Immaculé Nahayo and Clotilde Niragira led the delegation of Burundi.

⁴⁶⁸ *Ibid.* Vice President Francisco Santos led the delegation of Columbia in December 2008.

⁴⁶⁹ *Ibid.* Ambassadors to Geneva formed part of the delegations for Israel, South Africa and the Democratic People's Republic of Korea.

⁴⁷⁰ *Ibid.*

⁴⁷¹ Human Rights Council, ‘Institution-building of the United Nations Human Rights Council,’ 18 June 2006, A/HRC/5/1, p. 2, para. 3(k).

⁴⁷² *Ibid.*

⁴⁷³ *Ibid.*

⁴⁷⁴ Nathalie Jeannin and Lauren Michaud, ‘Universal Periodic Review: An Ambivalent Exercise: Report and Recommendations April 2008 - December 2009,’ International Federation of Action by Christians for the Abolition of Torture, 24 December 2009, p. 14. The representation of men to women for these delegations is as follows: ‘the Philippines (15 men and 12 women), Mexico (15 men and 13 women), Germany (9 women and 12 men), the Former Yugoslav Republic of Macedonia (7 men and 6 women), Serbia (13 women and 10 men) and Albania (13 women and 14 men).’

delegations, including the United Arab Emirates, China, the Republic of Korea, Indonesia, Senegal, Switzerland, and Yemen.⁴⁷⁵ There were also several examples of delegations dominated by women, including Finland, Romania, Belize, the United Kingdom, Brunei Darussalam, and Norway.⁴⁷⁶

There is likewise a range in the ratios of men to women in the composition of the treaty bodies.⁴⁷⁷ With the exception of the Committee on the Elimination of Discrimination against Women (22 women: 1 man)⁴⁷⁸ and the Committee on the Rights of the Child (11 women: 7 men),⁴⁷⁹ most treaty bodies are dominated by men. Perhaps the over-representation on the above Committees reflects the central role of women in these areas, but it could also be explained by a lack of interest among men. It is unclear, however, why women are under-represented in the membership of the other treaties bodies. Ms Suela Janina (Albania) is the only member of the ten-member Committee on Enforced Disappearances who is a woman (10%).⁴⁸⁰ Three members of the eighteen-member Committee on the Elimination of Racial Discrimination are women (17%).⁴⁸¹ Only four members of the eighteen-member Committee on Economic,

⁴⁷⁵ *Ibid.* The ratio of men to women representing these delegations is as follows: ‘The United Arab Emirates delegation comprised 24 men and only 5 women; China’s delegation 31 men and 11 women; the Republic of Korea’s delegation 19 men and 7 women; Indonesia’s delegation 16 men and 5 women; Senegal’s delegation 15 men and 5 women; Switzerland’s delegation 14 men and 8 women; and Yemen’s delegation 20 men and 2 women.’

⁴⁷⁶ *Ibid.* The ratio of men to women representing these delegations is as follows: ‘The Finnish delegation included 12 women among its 15 members; the Romanian delegation 16 women and 8 men; for the Belize delegation 3 women and 1 man; the United Kingdom delegation 14 women and 9 men; the Brunei Darussalam delegation 10 women and 6 men; and the Norway delegation 16 women and 10 men.’

⁴⁷⁷ Alice Edwards, ‘Universal Suffrage and the International Human Rights Treaty Bodies: Where Are the Women?’ in M. Cherif Bassiouni and William A. Schabas, *New Challenges for the UN Human Rights Machinery* (Intersentia, Cambridge 2011), p. 152.

⁴⁷⁸ Office of the High Commissioner on Human Rights, ‘Committee on the Elimination of Discrimination against Women – Membership,’ 2013, available at: <http://www2.ohchr.org/english/bodies/cedaw/membership.htm>

⁴⁷⁹ Members of the Committee on the Rights of the Child who are women are Ms Agnes Akosua Aidoo, (Ghana) Ms Amal Aldoseri (Bahrain), Ms Aseil Al-Shehail (Saudi Arabia), Ms Sara de Jesus Oviedo Fierro (Ecuador), Ms Maria Herczog (Hungary), Ms Olga A. Khazova (Russian Federation), Ms Yasmeen Muhamad Shariff (Malaysia), Ms Maria Rita Parsi (Italy), Ms Kirsten Sandberg (Norway), Ms Hiranthi Wijemanne (Sri Lanka), and Ms Renate Winter (Austria). See Office of the High Commissioner for Human Rights, ‘Committee on the Rights of the Child – Membership,’ 2013, available at: <http://www2.ohchr.org/english/bodies/crc/members.htm>.

⁴⁸⁰ Office of the High Commissioner for Human Rights, ‘Committee on Enforced Disappearances,’ 2013 available at: <http://www.ohchr.org/EN/HRBodies/CED/Pages/CEDIndex.aspx>

⁴⁸¹ The members of the Committee on Elimination of Racial Discrimination that are women are Ms January Bardill (South Africa), Ms Anastasia Crickley (Ireland) and Ms Fatima-Binta Victoria Dah (Burkina Faso). Office of the High Commissioner for Human Rights, ‘Committee on the Elimination of Racial Discrimination – Membership,’ 2013, available at : <http://www2.ohchr.org/english/bodies/cerd/members.htm>

Social and Cultural Rights are women (22%).⁴⁸² Four members of the fourteen-member Committee on Migrant Workers are women (29%).⁴⁸³ Of the 18 members who comprise the Human Rights Committee, five (or 28%) are women.⁴⁸⁴ In the Committee against Torture, three of its ten members are women.⁴⁸⁵ Of the twenty-five members of the Subcommittee on the Prevention of Torture, eight are women (32%).⁴⁸⁶ The Committee on the Rights of Persons with Disabilities comes closest to having equal membership of between sexes with seven out of eighteen members (or 39%) who are women.⁴⁸⁷ It would be ideal for there to be equal or near-equal representation of men and women who are involved in the treaty-based bodies and the delegations participating in Universal Periodic Review; the similar range in ratios of men to women within the two types of mechanisms reveals that there is room for progress across the board.

The quality of delegations that represent States during the review process heavily influences State participation, and can, in part, be measured by the qualifications of

⁴⁸² The women who serve on the Committee on Economic, Social and Cultural Rights are Ms Maria-Virginia Bras Gomes (Portugal), Ms Jun Cong (China), Ms Lydia Carmelita Ravenberg (Suriname) and Ms Heisoo Shin (Republic of Korea). See The Office of the High Commissioner for Human Rights, 'Committee on Economic, Social and Cultural Rights,' 2013, available at: <http://www2.ohchr.org/english/bodies/cescr/members.htm>.

⁴⁸³ The women members of the Committee on Migrant Workers are Ms Fatoumata Abdourhamana Dicko (Mali), Ms Khedidia Ladjel (Algeria), Ms Andrea Miller-Stennett (Jamaica) and Ms Myriam Poussi (Burkina Faso). The Office of the High Commissioner for Human Rights, 'Committee on Migrant Workers - Membership,' 2013, available at: <http://www2.ohchr.org/english/bodies/cmw/members.htm>.

⁴⁸⁴ The women members of the Human Rights Committee are Ms Christine Chanet (France), Ms Zonke Zanele Majodina (South Africa), Ms Iulia Antoanella Motoc (Romania), Ms Anja Seibert-Fohr (Germany) and Ms Margo Waterval (Suriname). See Office of the High Commissioner for Human Rights, 'Human rights Committee – Membership,' 2013, available at: <http://www2.ohchr.org/english/bodies/hrc/members.htm>.

⁴⁸⁵ The women who are members of the Committee against Torture are Ms Felice Gaer (United States of America), Ms Nora Sveaass (Norway) and Ms Essadia Belmir (Morocco). See Office of the High Commissioner for Human Rights, 'Committee against Torture – Membership,' 2013, available at: <http://www2.ohchr.org/english/bodies/cat/members.htm>.

⁴⁸⁶ The eight women who serve on the Sub-Committee on Prevention of Torture are Ms Mari Amos (Estonia), Ms Lowell Patria Goddard (New Zealand), Ms Suzanne Jabbour (Lebanon), Ms Aisha Shujune Muhammad (Maldives), Ms June Caridad Pagaduan Lopez (Philippines), Ms Maria Margarida E. Pressbuder (Brazil), s. Judith Salgado (Ecuador) and Ms Aneta Stanchevska (The Former Yugoslav Republic of Macedonia). See Office of the High Commissioner for Human Rights, 'Sub-Committee on Prevention of Torture – Membership,' 2013, available at: <http://www2.ohchr.org/english/bodies/cat/opcat/membership.htm>.

⁴⁸⁷ The following members of the Committee on the Rights of Persons with Disabilities are women: Ms Maria Soledad Cisternas Reyes (Chile), Ms Theresia Degener (Germany), Ms Edah Wangechi Maina (Kenya), Ms Diane Mulligan (United Kingdom of Great Britain and Northern Ireland), Ms Safak Pavey (Turkey), Ms Ana Pelaez Narvaez (Spain) and Ms Silvia Judith Quan-Chang (Guatemala). See Office of the High Commissioner for Human Rights, 'Committee on the Rights of Persons with Disabilities - Membership,' 2013, available at: <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/Membership.aspx>.

delegates, their size and the gender balance among them. Whilst the qualifications and size of delegations was generally positive during sessions 1-6 of the first cycle, States should ensure that a more balanced ratio of men to women represents each delegation in accordance with resolution 5/1.⁴⁸⁸

State participation does not end during the interactive dialogue. It continues throughout the entire cycle, including during the implementation phase. As a cornerstone of the review process, implementation of accepted recommendations and voluntary commitments is arguably one of the most significant indicators of State participation. Implementation is best measured by determining whether States have implemented commitments and accepted recommendations arising from the previous cycle.

At the time of writing, the second cycle of review is in its early stages; analysis is limited to the thirteenth and fourteenth sessions (i.e. the first and second sessions of the second cycle). Although the second cycle of review is in its infancy, early trends regarding implementation have become apparent. Whilst there are several examples where States have successfully implemented recommendations from the first cycle, each State during sessions thirteen and fourteen has outstanding recommendations, the details of which will be discussed in greater detail in Chapter 8 on Implementation of and Follow-up on Accepted Recommendations and Voluntary Commitments.

State ‘participation’ in the review via accepting recommendations that it fails to follow through with is meaningless and defeats the intended purpose of the review process. Recommending States can play an integral role in following up on outstanding commitments when States under review fail to implement accepted recommendations and voluntary commitments. However, discussions during the interactive dialogue of sessions thirteen and fourteen reveal that State effort to implement accepted recommendations stemming from the first session was insufficient at best. In order to enhance State participation in future sessions/cycles, States under review must be more cognisant of implementing their commitments, whereas recommending States should develop a mechanism to track and follow up on the implementation of accepted recommendations. In summary, State participation is not only contingent on the

⁴⁸⁸ *Ibid.*, p. 15; Human Rights Council, ‘Institution-building of the United Nations Human Rights Council,’ 18 June 2006, A/HRC/5/1, B. Principles and Objectives, (k).

number of recommendations a State issues; it can also be measured by examining consultations with civil society, cooperation with non-governmental organisations, collaboration with non-governmental organisations, the quality of State delegations, and willingness to accept, implement and follow-up on recommendations.

4. Politicisation

As per Human Rights Council resolution 5/1, the Universal Periodic Review process is to 'be conducted in an objective, transparent, non-selective, constructive, non-confrontational and non-politicized manner.'⁴⁸⁹ The resolution further stipulates:

The review, rationalization and improvement of mandates, as well as the creation of new ones, must be guided by the principles of universality, impartiality, objectivity and non-selectivity, constructive international dialogue and cooperation, with a view to enhancing the promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development.⁴⁹⁰

In practice, however, Universal Periodic Review is an inherently political process, as it involves an interactive dialogue between State-led delegations generally comprised of State officials, including Ministers and Ambassadors, who represent their respective countries, and by extension, represent the economic, political, social, cultural and religious interests of that country. State interests guide the comments, questions and recommendations States pose during the interactive dialogue.

When taking the floor to speak during the interactive dialogue from the second cycle onwards, State comments, recommendations and questions are limited to two minutes for Observer States and three minutes for Member States unless Member State speaking time reduces from three to two minutes to accommodate all speakers. States that share political or economic interests with the State under review are able to use this time to comment or 'praise' the State concerned, rather than provide constructive recommendations or ask relevant questions. The International Human Rights Federation notes with concern that 'during the review of certain countries, positive comments by far outweighed constructive recommendations. Certain governments

⁴⁸⁹ Human Rights Council, 'Institution-building of the United Nations Human Rights Council,' 18 June 2006, A/HRC/5/1, p. 2, para. 3(g).

⁴⁹⁰ *Ibid.*, p. 7, para. 54. See also Henning Boekle 'Western States, the UN Commission on Human Rights, and the '1235' Procedure': The 'Question of Bias' Revisited.' (1995) *Netherlands Quarterly of Human Rights*, pp. 367-368.

took the opportunity to try to undermine advancements towards established human rights standards.⁴⁹¹ Even when coupled with recommendations, unnecessary praise contributes nothing towards the objectives of Universal Periodic Review and wastes valuable speaking time during the interactive dialogue that could instead be used to hold States accountable under the criteria set out for the review,⁴⁹² unless it is used to identify best practices that all States should strive to achieve.⁴⁹³ However, it is quite common for recommending States to soften criticism by beginning their statements with praise and concluding with recommendations, which is perhaps a reflection of diplomacy the State-led review process. During Venezuela's first review, for instance, sixteen States coupled their recommendations with praise.⁴⁹⁴ The following examples provide some context to the extent of this praise:

Belarus noted the policies on poverty reduction, particularly the achievement of the MDGs on eradication of poverty and access to water and sanitation. It also noted the achievements in the implementation of social programs and ensuring the rights of indigenous peoples. Belarus commended the policies to protect children's rights and efforts in fighting against human trafficking at the international level.⁴⁹⁵

Bolivia (Plurinational State of) highlighted Venezuela's recognition of human rights in its Constitution, particularly those of indigenous peoples and Afro-Venezuelans. It noted that the Committee on the Elimination of Racial Discrimination had also recognized the multi-ethnic and multicultural nature of Venezuelan society. It praised the participation of indigenous peoples in Parliament, elected with respect to their customs. It welcomed the Organic Education Law, its School Food Program and the Canaima Program on technology for education.⁴⁹⁶

The Islamic Republic of Iran noted Venezuela's progress in protecting human rights. It recognized efforts to ensure equal educational opportunities for all,

⁴⁹¹ International Human Rights Federation, 'The Universal Periodic Review Handbook,' available at: www.fidh.org/IMG/pdf/UPR_HANDBOOK.pdf.

⁴⁹² Human Rights Council, 'Institution-building of the United Nations Human Rights Council,' 18 June 2006, A/HRC/5/1, pp. 1-2, para. 1.

⁴⁹³ *Ibid.*, p. 5, para. 27(b).

⁴⁹⁴ *Ibid.* These States are Belarus (p. 10, para. 72), Bolivia (p. 5, para. 23), Brunei Darussalam (p. 9, para. 55), Democratic People's Republic of Korea (p. 7, para. 44), Dominican Republic (p. 9, para. 59), Islamic Republic of Iran (pp. 8-9, para. 45), Japan (p. 6, para. 25), Lebanon (p. 8, para. 46), Nicaragua (p. 5, para. 2), Pakistan (p. 10, para. 66), Russian Federation (p. 5, para. 22), Sri Lanka (p. 8, para. 48), Syrian Arab Republic (p. 8, para. 47), Thailand (p. 10, para. 74), Turkey (p. 8, para. 52) and Zimbabwe (p. 10, para. 69).

⁴⁹⁵ Human Rights Council, 'Report of the Working Group on the Universal Periodic Review: Venezuela (Bolivarian Republic of)' 7 December 2011, A/HRC/19/22, p. 10, para. 72.

⁴⁹⁶ *Ibid.*, p. 5, para. 23.

which increased enrolments. It welcomed the importance given to university education through the creation of the Ministry of People's Power for Higher Education. It commended Venezuela for (8) achieving gross enrolment of 85 per cent in higher education, placing it second in Latin America.⁴⁹⁷

One of the statements of praise during Venezuela's review made no obvious connection to the criteria set out for the review:

The Dominican Republic commended Venezuela for the implementation of policies in the field of education particularly designed to develop and promote the right to use information and communication technologies through the Canaima Education Project. It welcomed the launching of the Simon Bolívar satellite marking a milestone in the development of telecommunications, particularly in the fields of medicine and education.⁴⁹⁸

⁴⁹⁷ *Ibid*, pp. 8-9, para. 45.

⁴⁹⁸ *Ibid*, p. 9, para. 59.

The reviews of Algeria,⁴⁹⁹ Bahrain,⁵⁰⁰ Cuba,⁵⁰¹ Sri Lanka,⁵⁰² Tunisia,⁵⁰³ likewise provide clear examples of reviewing States using the interactive dialogue as an opportunity to praise and commend States under review.⁵⁰⁴

During the eighth session of the Human Rights Council, the permanent representative to the United Nations for Peru, Jose Eduardo Ponce Vivanco, underscored that

It is essential to avoid both a politicization of the exercise and also disproportionate words of praise, and advisable to avoid repetitive statements that ignore the concrete situation in each country being examined... [T]he dialogue should focus on actions and facts that can objectively contribute to addressing human rights issues in the countries being examined.⁵⁰⁵

Although it is not possible to eliminate politicisation and selectivity during the review process, given that State representatives will naturally make decisions based on the political, economic, social, and cultural interests of their respective State, steps can be

⁴⁹⁹ Human Rights Council, 'Report of the Working Group on the Universal Periodic Review: Algeria,' 23 May 2008, A/HRC/8/29. See p. 5, para. 20 (Djibouti); p. 6, para. 23 (Sudan); p. 6, para. 26 (Oman); p. 6, para. 28 (Italy); p. 7, para. 32 (Cuba); p. 7, para. 35 (Jordan); p. 7, para. 36 (Mauritania); p. 8, para. 38 (The Republic of Korea); p. 8, para. 39 (Saudi Arabia); p. 8, para. 43 (Lebanon); p. 9, para. 46 (Belarus); p. 9, paras. 50, 53 (Tunisia); p. 10, para. 54 (The United Arab Emirates); p. 10, para. 55 (Belgium); p. 11, para. 65 (Indonesia); p. 11, para. 66 (Côte d'Ivoire).

⁵⁰⁰ Human Rights Council, 'Report of the Working Group on the Universal Periodic Review: Bahrain,' 22 May 2008, A/HRC/8/19. See p. 6, para. 19 (Palestine); p. 6, para. 20 (India); p. 6, para. 21 (Pakistan); p. 6, para. 22 (Qatar); p. 7, para. 24 (United Arab Emirates); p. 7, para. 25 (Saudi Arabia); p. 7, para. 26 (Turkey); p. 8, para. 30 (Libya); p. 8, para. 33 (China); p. 8, para. 34 (Sri Lanka); p. 8, para. 35 (Switzerland); p. 8, para. 36 (Bangladesh); p. 10, para. 48 (The United Kingdom); p. 11, para. 53 (Djibouti); p. 12, para. 56 (The United States); p. 12, para. 58 (Yemen).

⁵⁰¹ Human Rights Council, 'Report of the Working Group on the Universal Periodic Review: Cuba,' 5 October 2009, A/HRC/11/22. See p. 7, para. 52 (Algeria); p. 7, para. 54 (The Democratic People's Republic of Korea); p. 9, para. 61 (Venezuela); pp. 9-10, para. 63 (Bhutan); p. 12, para. 69 (The Islamic Republic of Iran); p. 12, para. 72 (India); p. 13, para. 77 (Jordan); p. 14, para. 81 (Tunisia); p. 14, para. 83 (The Philippines); p. 14, para. 85; p. 16, para. 91 (Viet Nam); p. 17, para. 94 (Uzbekistan); p. 17, para. 95 (Mexico); p. 18, para. 98 (Azerbaijan); p. 18, para. 99 (Djibouti); p. 18, para. 100 (Palestine); pp. 18-19, para. 102 (Bangladesh); p. 19, para. 104 (Honduras); pp. 19-20, para. 107 (Thailand); and p. 20, para. 108 (Côte d'Ivoire).

⁵⁰² Human Rights Council, 'Report of the Working Group on the Universal Periodic Review: Sri Lanka,' 5 June 2008, A/HRC/8/46. See p. 7, para. 25 (Palestine); p. 7, para. 33 (Bhutan); p. 9, para. 36 (The Holy See); p. 9, para. 38 (Saudi Arabia); p. 12, para. 53 (Latvia); and, p. 14, para. 63 (Egypt).

⁵⁰³ Human Rights Council, 'Report of the Working Group on the Universal Periodic Review: Tunisia,' 22 May 2008, A/HRC/8/21. See p. 6, para. 13 (Palestine); p. 8, para. 21 (India); p. 8, para. 23 (Ghana); pp. 8-9, para. 24 (Mauritania); p. 9, para. 25 (Bangladesh); p. 9, para. 26 (Angola); p. 9, para. 27 (Japan); p. 9, para. 28 (The United Kingdom); p. 9, para. 29 (Zambia); p. 9, para. 30 (The Syrian Arab Republic); p. 10, para. 31 (Morocco); p. 10, para. 32 (Singapore); p. 12, para. 41 (Azerbaijan); p. 13, para. 49 (Romania); p. 14, para. 53 (Ukraine); p. 15, para. 56 (Nigeria); p. 17, para. 71 (Canada); p. 17, para. 72 (Albania).

⁵⁰⁴ Nathalie Jeannin and Lauren Michaud, 'Universal Periodic Review: An Ambivalent Exercise: Report and Recommendations April 2008 - December 2009,' International Federation of Action by Christians for the Abolition of Torture, 24 December 2009, pp. 26-27.

⁵⁰⁵ Human Rights Council, 'Report of the Human Rights Council on its Eighth Session,' 1 September 2008, A/HRC/8/52, p. 211, para. 696.

taken to mitigate the degree to which this hinders the efficacy of the review process and the outcome it yields. While the review process is in its early stages, it is clear that there is a wide gap in participation between most active and least active States and that this gap correlates to the region to which the State belongs. Several factors influence the quality of State participation, including the accessibility, inclusivity and thoroughness of consultations with civil society; cooperation and collaboration with non-governmental organisations and relevant stakeholders; the quality of State delegations; willingness to accept, implement and follow-up on recommendations; and the overall political and selective undertone of statements made during the review process.

Chapter 7

Evaluating Recommendations and Voluntary Commitments

The first step towards evaluating recommendations posed by States during the Universal Periodic Review process rests on an understanding of the normative framework of the process. The normative framework of Universal Periodic Review is examined to assess whether, in practice, States refer to specific human rights obligations as they appear in the Universal Declaration of Human Rights, the Charter of the United Nations, international human rights law, and applicable international humanitarian law when making recommendations or voluntary commitments. The legal substance of the human rights within voluntary commitments and those raised by States during the interactive dialogue are likewise evaluated. This chapter further assesses different methods of categorising recommendations then examines the quality of recommendations made during the interactive dialogue.

1. The Normative Framework for Universal Periodic Review

The following assessment of the normative framework of Universal Periodic Review reveals whether States refer to the criteria for the review process, as set out in Human Rights Council resolution 5/1.⁵⁰⁶ States are to be held accountable under the Charter of the United Nations, the Universal Declaration of Human Rights, international human rights treaties that the State has signed or ratified, voluntary commitments or pledges made by the State under review, and applicable international humanitarian law.⁵⁰⁷ This section explains how, in practice, recommending States seldom refer to the criteria for the review process when making voluntary commitments and making comments/recommendations during the interactive dialogue. Without rooting statements and commitments in the normative framework of the review process, it can become unclear whether these statements fall beyond the scope of the review and thus negate its intended purpose.

⁵⁰⁶ Human Rights Council, 'Institution-building of the United Nations Human Rights Council,' 18 June 2006, A/HRC/5/1, See Part A. Basis of the Review, paras. 1-2.

⁵⁰⁷ *Ibid.* See also Draluck, Eric R., 'Law, Politics and Obligations in the Universal Periodic Review,' 31 May 2010, University of Oslo, Faculty of Law, pp. 24-25.

1.1 Specific Reference to the Legal Basis of Recommendations and Voluntary Commitments

When making voluntary commitments, commenting, posing questions or making recommendations, States have referred to key human rights instruments that the State under review has not signed and/or ratified. However, reference to specific human rights provisions in the Charter of the United Nations, Universal Declaration of Human Rights, international human rights law to which the State is a party, international humanitarian law (where applicable) and voluntary commitments is infrequent.

The outcome of the review is to include ‘voluntary commitments and pledges made by the country under review.’⁵⁰⁸ Of the 21,343 recommendations and 603 voluntary commitments and pledges made during sessions 1-12 of the first cycle of review, only one voluntary commitment and one recommendation refer to the Charter of the United Nations.⁵⁰⁹ The Marshall Islands pledged that it is ‘committed to fulfilling its human rights obligations under the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women and continuing to adhere to the Universal Declaration on Human Rights as well as the Charter of the United Nations.’⁵¹⁰ The Marshall Islands reaffirms its commitment to the criteria set out for the review process, citing the only two human rights treaties it has ratified and omitting international humanitarian law due to the lack of involvement in armed conflict. It is interesting to note that the Marshall Islands committed towards ‘adhering’ to the Declaration when the Declaration is not binding.

China advanced the sole recommendation citing the Charter, requesting that the United States of America ‘Quickly close down Guantanamo prison and follow the provisions of the United Nations Charter and the Security Council Resolution by expatriating the terrorist suspect to their country of origin.’⁵¹¹ In its recommendation, China does not specify whether it is referring to the human rights provisions found in the Charter or

⁵⁰⁸ Human Rights Council, ‘Institution-building of the United Nations Human Rights Council,’ 18 June 2006, A/HRC/5/1, p. 4, para. 5(e).

⁵⁰⁹ UPR-info.org, ‘Database of UPR Recommendations,’ 2012, available at: <http://www.upr-info.org/database/>

⁵¹⁰ Human Rights Council, ‘Universal Periodic Review: Report of the Working Group on the Universal Periodic Review: Marshall Islands,’ 4 January 2011, A/HRC/16/12, p. 7, para. 25.

⁵¹¹ Human Rights Council, ‘Universal Periodic Review: Report of the Working Group on the Universal Periodic Review: United States of America,’ 4 January 2011, A/HRC/16/11, p. 24, para. 92.157.

which Security Council resolution the United States of America should follow, yet the United States of America accepted this recommendation.

This figure demonstrates that States are omitting consideration of the Charter when making recommendations and voluntary commitments. Omitting reference to the Charter could be explained if recommending States adopted the approach that other human rights obligations are more specific and could significantly improve the human rights situation at the ground level in the State concerned. The only provisions of the Charter that are applicable to the review process are the preamble,⁵¹² Article 1(3)⁵¹³ and Article 55(c).⁵¹⁴ Relying on the other criteria for Universal Periodic Review allows recommending States to make statements based on specific obligations, such as those found in the international human rights treaties. However, as will be discussed further below, few States refer to specific provisions and obligations when citing international human rights law generally or particular international human rights treaties.

Of the recommendations and voluntary commitments made during the first twelve sessions of the first cycle, only two voluntary commitments referenced the Declaration. One of the two voluntary commitments that refer to the Declaration, made by the Marshall Islands, is already discussed above, as its voluntary pledge likewise mentions the Charter.⁵¹⁵ Sri Lanka voluntarily pledged that ‘The Ministry of Disaster Management and Human Rights will launch a national human rights awareness campaign to commemorate the sixtieth anniversary of the Universal Declaration of Human Rights

⁵¹² The preamble of the *Charter of the United Nations* states ‘We the people of the United Nations determined to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and to reaffirm within fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women, and of nations large and small, and to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and to promote social progress and better standards of life in larger freedom.’

⁵¹³ According to Article 3(1) of the *Charter*, one of the purposes of the United Nations is to The Purposes of the United Nations are ‘to achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.’

⁵¹⁴ As per Article 55, ‘With a view to the creation of conditions of stability and well-being, which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote: c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.’

⁵¹⁵ Human Rights Council, ‘Universal Periodic Review: Report of the Working Group on the Universal Periodic Review: Marshall Islands,’ 4 January 2011, A/HRC/16/12, p. 7, para. 25.

in 2008.⁵¹⁶ An awareness campaign marks a step towards the promotion of human rights and ensuring individuals understand the rights found within the Declaration, but does not provide protection for those rights. During the first cycle of review, only twenty-one recommendations expressly referenced the Declaration. These recommendations will be discussed in detail in sub-section 1.2: Universal Periodic Review as a Tool for Widening the Scope of Accountability.

When compared to the other criteria against which States are reviewed, most recommendations refer to State adherence towards obligations stemming from international human rights law. Unfortunately, many of the recommendations that refer to international human rights law centre on outstanding ratification, which is not part of the criteria set for the review. During the first review cycle, 2383 recommendations of 21,353, or 11% of the total recommendations, referred to ratification of outstanding international human rights instruments and their Optional Protocols. A further 241 recommendations refer to the withdrawal of reservations. Whilst it is important for States under review to ratify outstanding international human rights treaties and withdraw reservations, the fact is little attention is paid to existing specific human rights provisions as per the criteria set out for the review under resolution 5/1. States are to be held accountable for, *inter alia*, human rights treaties that they *have* signed or ratified. Although ratification of outstanding human rights treaties can lead to the improvement of human rights at the ground level, expanding the scope of State ratification of international human rights treaties was deliberately excluded from the criteria for the review process. Recommendations advanced by States during Universal Periodic Review should reflect this.⁵¹⁷

Whilst the Charter and Declaration apply to all United Nations Member States at all times, international humanitarian law is only applicable to Member States that are involved in an international armed conflict. In the Tadic case, the International Criminal Tribunal for the former Yugoslavia set out the formal legal test for

⁵¹⁶ Human Rights Council, 'Report of the Working Group on the Universal Periodic Review: Sri Lanka,' 18 December 2012, A/HRC/22/16, p. 21, para. 91.

⁵¹⁷ Office of the High Commissioner for Human Rights, Secretariat of the Human Rights Council, 'Updated Compilation of Proposals and Relevant Information on the Universal Periodic Review,' 5 April 2007, p. 31; Nadia Bernaz, 'Reforming the UN Human Rights Protection Procedures: A Legal Perspective on the Establishment of the Universal Periodic Review Mechanism,' in Kevin Boyle, (ed) *New Institutions for Human Rights Protection* (Oxford, Oxford University Press 2009), p. 79.

determining whether a State is involved in an international armed conflict, explaining that ‘an armed conflict exists whenever there is a resort to armed force between States.’⁵¹⁸ Fifty-six recommendations referred to international humanitarian law generally during sessions 1-12 of the first cycle. Somalia received the most recommendations (13),⁵¹⁹ or over 15% of the total recommendations that refer to international humanitarian law. Thailand, for instance, called for Somalia to ‘investigate all allegations of violation of human rights and humanitarian law in a prompt, transparent and impartial manner.’⁵²⁰ Argentina made a similar recommendation,⁵²¹ whereas Canada recommended that Somalia ‘issue clear, public orders and take clear steps to ensure that its security forces (and militias under its purview) comply with international human rights law and with international humanitarian law, including the principles of distinction and proportionality.’⁵²²

An additional twenty recommendations referred to the Geneva Conventions and eleven to the Hague Conventions. Half of the recommendations made regarding the Geneva Conventions called for ratification, whilst the remaining half called on States under review to fulfil existing obligations. Most recommendations regarding compliance with the Geneva Conventions were directed towards Israel to which Israel provided no response. For instance, Malaysia recommended that Israel ‘fully implement its obligations under international law, including international humanitarian law, in particular, the Fourth Geneva Convention of 1949 relating to the treatments of non-combatants in the hands of the occupying power.’ Bahrain further drew on the Geneva Convention in a detailed recommendation that Israel ‘Grant Palestinians economic, social and cultural rights as well as civil and political rights. Allow Palestinians to reach places of worship, and protect religious freedom in accordance with article 27 of the Fourth Geneva Convention, as the occupying power,

⁵¹⁸ International Criminal Tribunal for the Former Yugoslavia, *The Prosecutor v. Dusko Tadic*, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, IT-94-1-A, 2 October 1995, para. 70, available at: <http://www.icty.org/x/cases/tadic/acdec/en/51002.htm>

⁵¹⁹ Human Rights Council, ‘Report of the Working Group on Universal Periodic Review: Somalia,’ 11 July 2011, A/HRC/18/6, p. 16, para. 98.43 (Argentina); p. 16, para. 98.48 and p. 17, para. 98.77 (Turkey); p. 17, para. 98.73 (Canada); p. 17, para. 98.74 (Austria); p. 19, para. 98.96 (Sweden); p. 19, para. 98.103 and p. 19, para. 98.108 (Switzerland); p. 19, para. 98.105 (Thailand); p. 19, para. 98.106 (Argentina); p. 20, para. 98.114 (Yemen); p. 20, para. 98.115 (Republic of Iran); and p. 20, para. 98.116 (Australia).

⁵²⁰ *Ibid.*, p. 19, para. 98.105.

⁵²¹ *Ibid.*, para. 98.106.

⁵²² *Ibid.*, p. 17, para. 98.73

and bear its responsibility in this respect and allow the international community organizations, particularly the ICRC to ascertain the health conditions of Arab detainees in Israeli prisons.’ Unfortunately, all of the recommendations that refer to the Hague Conventions only call for ratification, rather than implementation or enforcement of existing obligation, which could be seen as a missed opportunity.

Although considerably more recommendations referred to international humanitarian law (87 recommendations in total) than to the Charter, Declaration and voluntary commitments and pledges combined (36 recommendations), the figure is still rather low when measured against the total number of recommendations made (21,353 recommendations) during sessions 1-12 of the first cycle.⁵²³

In the first cycle of review, only 12 recommendations referred to the fulfilment of existing voluntary pledges and commitments. Austria, Azerbaijan, Canada, Egypt, Oman and Pakistan received recommendations regarding fulfilment of voluntary pledges, whereas Libya, Nicaragua, Slovakia, Viet Nam and Yemen received recommendations regarding the fulfilment of its voluntary commitments. These recommendations refer to the fulfilment of pledges and voluntary commitments in the context of amending legislation, cooperating with Special Procedures, institution building and those stemming from presentations for candidature within the Human Rights Council.

Of the recommendations regarding legislation, the Republic of Korea recommended that Austria ‘make every effort to fulfil its voluntary pledges to include a definition of torture enshrined in CAT into the national Criminal Code,’⁵²⁴ whereas Mexico recommended ‘that the legislation related to violence against women, which would be promulgated based on the voluntary pledges made by Egypt, include provisions aimed at eliminating de jure and de facto discrimination against women.’⁵²⁵

In terms of voluntary pledges and commitments relating to Special Procedures, it was recommended that Azerbaijan ‘fulfil its voluntary pledge (Latvia) and issue (Norway)

⁵²³ UPR Info, ‘Statistics of UPR Recommendations,’ 2012, available at: www.upr-info.org/database/statistics/

⁵²⁴ Human Rights Council, ‘Report of the Working Group on the Universal Periodic Review: Austria,’ 18 March 2011, A/HRC/17/8, p. 13, para. 92.8.

⁵²⁵ Human Rights Council, ‘Report of the Working Group on the Universal Periodic Review: Egypt,’ 26 March 2010, A/HRC/14/17, p. 13, para. 95.16.

and implement (Czech Republic) a standing invitation to all the Special Procedures of the Human Rights Council.⁵²⁶ The Dominican Republic also recommended that Nicaragua ‘continue cooperating with the special procedures of the Human Rights Council, in accordance with its voluntary commitment to keeping the invitation to these procedures open.’⁵²⁷

Two recommendations were made regarding institution-building pledges. The Syrian Arab Republic recommended that Oman ‘fulfil the voluntary pledge to establish a follow-up committee to study all recommendations submitted during the current universal periodic review process.’⁵²⁸ Egypt recommended Pakistan establish a national commission on human rights ‘in accordance with the Paris Principles (United Kingdom, Ireland), in fulfilment of its voluntary pledges.’⁵²⁹

A third of the recommendations made regarding voluntary pledges and commitments during the first cycle of review centred on those stemming from ‘those undertaken when presenting their candidatures for election to the Human Rights Council,’ in line with the basis for review set out in Human Rights Council Resolution 5/1.⁵³⁰ Sudan recommended that Libya ‘Continue to implement its voluntary commitments to promote human rights through its membership in the Human Rights Council, the African Union and the League of Arab States in order to prevent double standards in dealing with specific countries and to promote dialogue between nations, instead of resorting to force or the imposition of coercive measures or using human rights as a reason to interfere in the internal affairs of States.’⁵³¹ Algeria recommended that Slovakia ‘ratify/accede/adhere to the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (Mexico, Argentina, Azerbaijan, Algeria) bearing in mind the voluntary commitment in its candidature to the Human Rights Council to work for the universal ratification of all United Nations

⁵²⁶ Human Rights Council, ‘Report of the Working Group on the Universal Periodic Review: Azerbaijan,’ 29 May 2009, A/HRC/11/20, p. 18, para. 96.5.

⁵²⁷ Human Rights Council, ‘Report of the Working Group on the Universal Periodic Review: Nicaragua,’ 17 March 2010, A/HRC/14/3, p. 16, para. 90.18.

⁵²⁸ Human Rights Council, ‘Report of the Working Group on the Universal Periodic Review: Oman,’ 24 March 2011, A/HRC/17/7, p. 19, para. 89.99.

⁵²⁹ Human Rights Council, ‘Report of the Working Group on the Universal Periodic Review: Pakistan,’ 4 June 2008, A/HRC/8/42, p. 19, para. 106.29.

⁵³⁰ Human Rights Council, ‘Institution-building of the United Nations Human Rights Council,’ 18 June 2006, A/HRC/RES/5/1, p. 2, para. 2.

⁵³¹ Human Rights Council, ‘Report of the Working Group on the Universal Periodic Review: Libyan Arab Jamahiriya,’ 4 January 2011, A/HRC/16/15, p. 15, para. 93.7.

human rights instruments and actively encourage countries which are not yet party to them to ratify them.’⁵³² It was recommended that Yemen ‘ratify/accede/adhere to the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (Mexico, Argentina, Azerbaijan, Algeria) bearing in mind the voluntary commitment in its candidature to the Human Rights Council to work for the universal ratification of all United Nations human rights instruments and actively encourage countries which are not yet party to them to ratify them.’⁵³³ Mexico further recommended that Yemen ‘follow up on the implementation of voluntary commitments as reflected in its national report and consider their inclusion in its national human rights strategy.’⁵³⁴ The Syrian Arab Republic recommended that Canada ‘implement the voluntary pledges it presented as it applied to the Human Rights Council; namely, the principles of universality, objectivity and non-selectivity in the consideration of human rights issues, and the elimination of double standards and politicization in addressing human rights issues of different communities and peoples domestically and internationally.’⁵³⁵

Lastly, Pakistan made a general recommendation that Viet Nam ‘expedite implementation of its voluntary commitments.’⁵³⁶ Although it is positive to follow up on the implementation of commitments, it would be useful for the recommendation to explain the substance of those commitments.

Voluntary commitments and pledges mark a step forward in the realisation of human rights at the ground level, but it is insufficient for a State to merely commit or pledge to take action if it fails to follow through. Depending on the nature of a given commitment or pledge, Universal Periodic Review could be the only forum available for recommending States to hold States under review accountable for outstanding commitments and pledges, thus ensuring promises to improve the human rights situation are translated into action.

⁵³² Human Rights Council, ‘Report of the Working Group on the Universal Periodic Review: Slovakia,’ 5 June 2009, A/HRC/12/17, p. 14, para. 89.1.

⁵³³ Human Rights Council, ‘Report of the Working Group on the Universal Periodic Review: Yemen,’ 5 June 2009, A/HRC/12/13, p. 15, para. 91.27.

⁵³⁴ *Ibid*, p. 15, para. 91.28.

⁵³⁵ Human Rights Council, ‘Report of the Working Group on the Universal Periodic Review: Canada,’ 5 October 2009, A/HRC/11/17, p. 22, para. 86.68.

⁵³⁶ Human Rights Council, ‘Report of the Working Group on the Universal Periodic Review: Viet Nam,’ 5 October 2009, A/HRC/12/11, p. 24, para.99.93.

Overall, the above data reveal that States seldom refer to the criteria set out for the review process when making taking the floor during the interactive dialogue.⁵³⁷ Given that few States cite the source of the ‘human rights’ being raised during the review process, it is unclear where these obligations originate and whether they are applicable to the State under review or fall within the scope of the normative framework for the review process as set out in Human Rights Council resolution 5/1. These trends illustrate that many States tend to overlook the intended purpose of the Universal Periodic Review process, which is to review *existing*, specific obligations under the Charter of the United Nations, Universal Declaration of Human Rights, and international human rights treaties that the State under review has signed or ratified, international humanitarian law, as applicable, and voluntary commitments.

States that comment, ask questions, and make recommendations are doing so on a superficial level without referring to specific human rights obligations. Little research and effort is required for States to determine whether a State under review has ratified all of the human rights treaties and to comment, ask questions, and make recommendations in this regard. Another possible explanation is that recommending States may deliberately focus on ratification in their recommendations to avoid holding States accountable for violating existing international legal obligations.

The very fact that so few recommendations refer to the Charter of the United Nations and the Universal Declaration of Human Rights, voluntary commitments and pledges, and applicable international humanitarian law, which constitute four of the five pillars of the normative framework, suggests that States need to be more rigorous in their application of the criteria set out for the Universal Periodic Review process. Wherever possible, States should link recommendations to their source in international law to prevent the States concerned from rejecting recommendations on the basis that no such obligations exist. Adhering to the criteria against which the review is measured would also clearly demonstrate that States take the review process seriously and invest the requisite effort in their participation.

⁵³⁷ UPR Info, ‘Statistics of UPR Recommendations,’ 2012, available at: www.upr-info.org/database/statistics/

1.2 Universal Periodic Review as a Tool for Widening the Scope of Accountability

Although States that are not a party to one or more of the human rights treaties cannot be held accountable for those obligations before the corresponding treaty body, those States could be held accountable for under the Universal Declaration of Human Rights during the review process. Whilst States have the discretion to reject recommendations, several States have responded to questions on and accepted recommendations to improve their human rights record on the ground level in accordance with standards set out within the Declaration, irrespective of whether the given State is a party to the corresponding human rights treaty. In this way, holding States accountable for human rights obligations set out in the Declaration expands the normative legal framework traditionally found in the human rights monitoring mechanisms of the United Nations. As mentioned in the previous sub-section, few States have pursued this avenue when holding States under review accountable.

The Islamic Republic of Iran, for instance, is not party to the Convention against Torture and other Cruel, Inhuman and Degrading Treatment and thus cannot be held accountable for committing acts of torture or cruel, inhuman, and degrading treatment before the United Nations Sub-Committee on the Prevention of Torture.⁵³⁸ In a written question submitted to the Republic of Iran, Sweden expressed deep concern over ‘credible reports that torture and ill-treatment regularly have been taking place in Iranian prisons and detention centres in the aftermath of the Presidential elections in June 2009.’⁵³⁹ Sweden noted that:

Torture and ill-treatment are among the most serious violations of human rights and human dignity. According to the Universal Declaration of Human Rights, no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. No exceptions are permitted under international law.

⁵³⁸ *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (adopted 10 December 1984, entered into force 26 June 1987) United Nations General Assembly Resolution 39/46 27(1). Article 5 stipulates ‘No one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment.’

⁵³⁹ United Nations Office of the High Commissioner for Human Rights, ‘Advance Questions to the Islamic Republic of Iran,’ 7th session of Universal Periodic Review, 15 February 2012, p. 5, available at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/IRsession7.aspx> [Last accessed 13 February 2012]

All countries are obligated to comply with the unconditional prohibition of all forms of torture and ill-treatment.⁵⁴⁰

In this case, referring to the Declaration in place of Article 7 of International Convention on Civil and Political Rights to which Iran is a party, does not widen the scope of accountability and weakens the strength of the recommendation by relying on non-binding law in place of binding obligations. However, advancing this same recommendation to Bhutan, which is not a party to the Convention against Torture or International Covenant on Civil and Political Rights, would have expanded the scope of accountability. Unfortunately, Bhutan only received two recommendations regarding torture, neither of which refer to the Declaration. Slovakia called for ratification of outstanding treaties, including the Convention and Covenant,⁵⁴¹ whereas Argentina recommended that Bhutan ‘incorporate the definition and prohibition of torture and other cruel, inhuman or degrading treatment in national legislation,’⁵⁴² without citing the legal source of its recommendation.

Four comments/recommendations were made to Cuba that referenced the Universal Declaration of Human Rights. Cuba accepted Switzerland’s recommendation to ‘continue its efforts in the field of economic, social and cultural rights as well as rights recognized in the UDHR and ICCPR,’⁵⁴³ which is not unusual considering that Cuba is a party to the International Covenant on Civil and Political Rights. In contrast, Cuba provided a general response to Israel’s recommendation to ‘ensure the right to equality before courts and tribunals, and to a fair trial, as provided for by the Universal Declaration of Human Rights and ICCPR, and as outlined by the United Nations Basic Principles on the Independence of the Judiciary.’⁵⁴⁴ The disparate responses suggest that Cuba is more concerned with the nature of the recommendation, rather than its source. The first accepted recommendation requires minimal action on part of the State (i.e. ‘to continue its efforts...’), whereas ensuring the ‘right to equality...and to a fair

⁵⁴⁰ Human Rights Council, ‘Advance Questions to the Islamic Republic of Iran,’ 7th session of Universal Periodic Review, 15 February 2012, p. 5.

⁵⁴¹ Human Rights Council, ‘Working Group Report on Universal Periodic Review: Bhutan,’ 4 January 2010, A/HRC/13/11, pp. 13-14, para. 101.1.

⁵⁴² *Ibid*, p. 14, para. 101.5.

⁵⁴³ Human Rights Council, ‘Universal Periodic Review: Report of the Working Group on the Universal Periodic Review: Cuba,’ 5 October 2009, A/HRC/11/22, p. 26, para. 130.49. Cuba is a signatory, but not a party, to the International Covenant on Civil and Political Rights.

⁵⁴⁴ *Ibid*, p. 28, para.130.16.

trial’ will likely necessitate more resources in order to fulfil. Perhaps these factors swayed Cuba more than the source of the recommendation.

In its recommendation, Austria made specific reference to the Declaration, suggesting that ‘Cuba halt the prosecution of citizens who are exercising the rights guaranteed under articles 18, 19, 20, 21 and 22 of the UDHR,’⁵⁴⁵ which Cuba rejected. Cuba also rejected a similar recommendation from Slovakia to ‘take all necessary measures, including reviewing its legislation, in order to avoid cases of prosecution of those who exercise their rights guaranteed under articles 18, 19 and 20 of the UDHR.’⁵⁴⁶ Rights similar to the ones cited for the Declaration are found in the International Covenant on Civil and Political Rights; however, since Cuba has not ratified the Covenant, recommending States can rely on the Declaration as a source of soft legal obligations.

The same applies to Canada’s recommendation that Oman ‘review and amend national legislation to ensure compliance with the rights to freedom of opinion and expression enshrined in the Universal Declaration of Human Rights.’⁵⁴⁷ Much like the above recommendation, it appears Canada has relied on the Declaration, because Oman is not a party to the International Covenant on Civil and Political Rights, which provides similar protections for freedom of expression under Article 19.

The United States of America recommended that Brunei Darussalam ‘rescind the Sedition Act and the Newspaper Act and bring its laws and practices regarding freedom of the media and freedom of speech into line with the Universal Declaration on Human Rights.’⁵⁴⁸ As Brunei Darussalam has not ratified any of the international human rights treaties, aside from the Convention on the Rights of the Child, the Declaration is the only authority within the criteria set out for the review that applies for the above recommendation. It is a prime example of how recommending States can widen the scope of accountability beyond those rights found in the international human rights treaties to which the State concerned is a party.

⁵⁴⁵ *Ibid*, p. 26, para. 96.

⁵⁴⁶ *Ibid*, p. 19, para. 105.

⁵⁴⁷ Human Rights Council, ‘Report of the Working Group on Universal Periodic Review: Oman,’ 4 March 2011, A/HRC/17/7, p. 20, para. 90.19.

⁵⁴⁸ Human Rights Council, ‘Report of the Working Group on Universal Periodic Review: Brunei Darussalam,’ 4 January 2010, A/HRC/13/14, p. 19, para. 23.

In its recommendation to Madagascar, Norway noted ‘that the principles of governance set out in the Universal Declaration of Human Rights are applied, as they are key to the sustainable management of natural resources, such as protected rainforests, and essential to the realization of fundamental economic, social and cultural rights.’⁵⁴⁹ This is yet another excellent example of how the Declaration can be used to extend the scope of accountability during the review process. Although the connection between the Declaration and human rights may not be immediately apparent, the Office of the High Commission on Human Rights has identified the environment as one of six cross-cutting themes emerging from the Declaration, explaining that:

The environment is never specifically mentioned in the Universal Declaration of Human Rights, yet if you deliberately dump toxic waste in someone's community or disproportionately exploit their natural resources without adequate consultation and compensation, clearly you are abusing their rights. Over the past 60 years, as our recognition of environmental degradation has grown so has our understanding that changes in the environment can have a significant impact on our ability to enjoy our human rights. In no other area is it so clear that the actions of nations, communities, businesses and individuals can so dramatically affect the rights of others - because damaging the environment can damage the rights of people, near and far, to a secure and healthy life.⁵⁵⁰

The Netherlands recommended that SUHAKAM, the Malaysian Human Rights Commission, be ‘in compliance with the Paris Principles and that jurisdiction covers all rights in the Universal Declaration of Human Rights.’⁵⁵¹ In a similar joint recommendation, the Netherlands and United Kingdom recommended that Malaysia ensure ‘the independence of SUHAKAM in accordance with the Paris Principles (United Kingdom and Netherlands) and amend act 597 (United Kingdom), so that the SUHAKAM’s scope covers all rights in the Universal Declaration of Human Rights (United Kingdom, Netherlands).’⁵⁵² It could be that the recommending States focus on the Declaration when the Paris Principles also emphasise the importance of ‘the

⁵⁴⁹ Human Rights Council, ‘Report of the Working Group on Universal Periodic Review: Madagascar,’ 26 March 2010, A/HRC/14/13, p. 12, para. 7.

⁵⁵⁰ Office of the High Commissioner for Human Rights, available at:

⁵⁵¹ Human Rights Council, ‘Report of the Working Group on Universal Periodic Review: Malaysia,’ 5 October 2009, A/HRC/11/30, p. 9, para. 35(c).

⁵⁵² Human Rights Council, ‘Report of the Working Group on Universal Periodic Review: Malaysia,’ 5 October 2009, A/HRC/11/30, p. 26, para. 7.

International Covenants on Human Rights and other international instruments for promoting respect for and observance of human rights and fundamental freedoms,’ because Malaysia has only ratified the Convention on the Rights of the Child, its Optional Protocols, and the Convention on the Rights of Persons with Disabilities.

Sudan recommended that the United States of America close ‘Guantanamo prison as the detention conditions violate the UDHR and ICCPR and the European Convention on Human Rights (ECHR) and all other related human rights instruments.’⁵⁵³ This recommendation demonstrates a fundamental misunderstanding of the criteria for the review and human rights law in general. First, the European Convention on Human Rights is not part of the criteria of the review. Second, even if regional treaties formed part of the criteria, the Inter-American Convention on Human Rights would apply, not the European Convention, and only if the United States of America were a party to it, which it is not. It is perhaps for this reason that the United States of America rejected this recommendation.

Slovenia recommended that the Democratic Republic of North Korea ‘fully comply with the principles and rights enshrined in the Universal Declaration of Human Rights, the two international covenants, the CRC and CEDAW, to which it is a party,’⁵⁵⁴ but the Democratic Republic of Korea provided no response, making it unclear whether it intends to implement the recommendation. Slovenia’s recommendation references the Declaration alongside binding international human rights law, strengthening the legal basis of the recommendation, particularly because the Democratic Republic of North Korea attempted to withdraw from the International Covenant on Civil and Political Rights in 1997, which the Secretary General of the United Nations would not permit unless all other signatories gave their consent.⁵⁵⁵ Unfortunately, Slovenia’s recommendation is very broad and reveals nothing about the existing human rights

⁵⁵³ Human Rights Council, ‘Universal Periodic Review: Report of the Working Group on the Universal Periodic Review: United States of America,’ 4 January 2011, A/HRC/16/11, p. 24, para. 92.158.

⁵⁵⁴ Human Rights Council, ‘Universal Periodic Review: Report of the Working Group on the Universal Periodic Review: Democratic Republic of Korea,’ 4 January 2010, A/HRC/13/13, p. 13, para. 90.3.

⁵⁵⁵ United Nations Treaty Series, Chapter IV: Human Rights, 2013, available at: http://treaties.un.org/Pages/ViewDetails.aspx?mtsg_no=IV-4&chapter=4&lang=en%23EndDec; See C.N.467.1997.TREATIES-10 of 12 November 1997 for the Democratic Republic of Korea’s notification of withdrawal and the *aide-mémoire* in response to the notification/request.

situation in the Democratic Republic of North Korea or specific issues that need to be addressed.

Another example of States citing the Declaration in tandem with international human rights treaties is Canada's recommendation that Saudi Arabia 'cease application of torture, other cruel, inhuman or degrading treatment or punishment, and corporal punishment of prisoners, in accordance with article 5 of the Universal Declaration of Human Rights and other international human rights treaties to which it is a party, including CAT and the Convention on the Rights of the Child (CRC).'⁵⁵⁶ Unlike Slovenia's recommendation to the Democratic Republic of North Korea, Canada's recommendation addresses a specific issue, the implementation of which can be clearly measured.

The United States of America adopted a similar approach in its recommendation that Viet Nam 'demonstrate its commitment to article 69 of its Constitution, article 19 of ICCPR and article 19 of the Universal Declaration of Human Rights by ensuring freedom of expression for members of the press without fear of arbitrary arrest or prosecution, provide for the free flow of information on the Internet and abolish restrictive regulations on blogging and the media,'⁵⁵⁷ drawing both from the Declaration and international human rights law as benchmarks for accountability.

Bangladesh recommended that Chile 'protect the right of family being the natural and fundamental group of society based upon the stable relationship between a man and a woman, as enshrined in article 16 of the Universal Declaration.'⁵⁵⁸ Since Chile is a party to the International Covenant on Civil and Political Rights, why would Bangladesh have not referred to article 23 of the Covenant, which provides similar protections that Chile is legally obligated to meet?

Israel has a legally binding obligation to protect cultural rights under Articles 1, 3, 6 and 15 of the Covenant and to protect religious rights under Article 2 of the International Covenant on Economic, Social and Cultural Rights. Whilst Israel may

⁵⁵⁶ Human Rights Council, 'Report of the Working Group on Universal Periodic Review: Saudi Arabia,' 4 March 2009, A/HRC/11/23, p. 9, para. 44(a).

⁵⁵⁷ Human Rights Council, 'Report of the Working Group on Universal Periodic Review: Viet Nam,' 5 October 2009, A/HRC/12/11, p. 13, para. 66(a).

⁵⁵⁸ Human Rights Council, 'Report of the Working Group on Universal Periodic Review: Chile,' 4 June 2009, A/HRC/12/10, pp. 7-8, para. 36(e).

have traditionally rejected the extraterritorial applicability of economic, social and cultural rights, in 2004, the International Court of Justice issued an advisory opinion entitled ‘Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory,’ clarifying that the obligations set out in the Conventions apply in the occupied territories.⁵⁵⁹ Despite the legally binding nature of these obligations under the Conventions, Morocco recommended that Israel ensure ‘the enjoyment by the Palestinians of all their cultural and religious rights, as contained in the Universal Declaration of Human Rights’⁵⁶⁰ to which Israel provided no response. Here, relying on the Declaration, rather than the Covenant, which Israel has signed and ratified, weakens the strength of the recommendation by relying on non-binding law in place of binding international human rights treaties to which the State concerned is a party.

Canada recommended that Egypt ‘fully implement Article 2 of the Universal Declaration of Human Rights, which provides that ‘Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,’ and to recognize that ‘sex’ also includes sexual orientation.’⁵⁶¹ Whether the word ‘sex’ in Article 2 is intended to include sexual orientation is the subject of much debate, but there is a growing commitment among the international community towards protecting gay, lesbian and transgendered rights, evidenced by the 217 recommendations that addressed sexual orientation issues during the first cycle of review.⁵⁶² During Senegal’s first review, the Netherlands also relied on the Declaration to protect gay rights, noting ‘that the Penal Code [in Sudan] criminalizes homosexual conduct and recommended that Senegal remove the article in question, which is not in compliance with the Universal Declaration of Human Rights.’⁵⁶³

⁵⁵⁹ International Court of Justice, ‘Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory: Advisory Opinion,’ 43 ILM 1009 (2004).

⁵⁶⁰ Human Rights Council, ‘Universal Periodic Review: Report of the Working Group on the Universal Periodic Review: Israel,’ 8 January 2009, A/HRC/10/76, p. 7, para. 26.

⁵⁶¹ Human Rights Council, ‘Report of the Working Group on Universal Periodic Review: Egypt,’ 26 March 2010, A/HRC/14/17, p. 20, para. 8.

⁵⁶² UPR-info.org, ‘Database of UPR Recommendations,’ 2013, available at: <http://www.upr-info.org/database/>

⁵⁶³ Human Rights Council, ‘Report of the Working Group on Universal Periodic Review: Senegal,’ 5 October 2009, A/HRC/11/24, p. 6, para. 28. See also p. 20, para. 6.

Tajikistan likewise referenced the Declaration in its recommendation that Kyrgyzstan ‘provide for the comprehensive protection and promotion of all human rights and fundamental freedoms enshrined in the Universal Declaration of Human Rights.’⁵⁶⁴ Although this recommendation enjoys the support of Kyrgyzstan, it would be a stretch to say that any country in the world has fully met this standard. How will Kyrgyzstan demonstrate that it has implemented this sweeping recommendation? Gaining a State’s acceptance for proceeding with such a vast commitment is a significant milestone, but it is during implementation when the outcome of the review makes its strongest impact on the realisation of human rights.

In its statement during Kyrgyzstan’s interactive dialogue, ‘Armenia expressed its readiness to support Kyrgyzstan’s efforts to build a future-oriented society whose members would fully enjoy the human rights enshrined in the Universal Declaration of Human Rights.’⁵⁶⁵ Unlike other recommendations that cite the Declaration, Armenia offered to assist Kyrgyzstan with meeting the criteria set out in the review, albeit in an ambiguous way.

The Declaration has also been cited during the Universal Periodic Review process in the context of identifying best practices. ‘Saudi Arabia commended the efforts [of Sri Lanka] to ensure conformity with international civil and political rights as well as the Universal Declaration of Human Rights, and noted that inter alia the adoption of the Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR) proves its commitment to promote and protect human rights for all its citizens.’⁵⁶⁶ Although it is positive that Saudi Arabia makes specific reference to the criteria for the review process, States should refrain from making statements of praise in the place of concrete recommendations that actually contribute to the outcome of the review and have the potential to instil change in the human rights situation at the ground level.

⁵⁶⁴ Human Rights Council, ‘Report of the Working Group on Universal Periodic Review: Kyrgyzstan,’ 16 June 2010, A/HRC/15/2, p. 13, para. 76.19.

⁵⁶⁵ Human Rights Council, ‘Report of the Working Group on Universal Periodic Review: Kyrgyzstan,’ 16 June 2010, A/HRC/15/2, p. 10, para. 58.

⁵⁶⁶ Human Rights Council, ‘Universal Periodic Review: Report of the Working Group on the Universal Periodic Review: Sri Lanka,’ 5 June 2008, A/HRC/8/46, p. 9, para. 38.

In its Report on France, the Working Group noted:

...France's history in promoting and protecting human rights, including the 1789 Declaration des Droits de l'Homme et du Citoyen, the Universal Declaration of Human Rights adopted by the General Assembly in Paris in 1948, and France's recent role and contribution in the negotiations and adoption of the International Convention for the Protection of All Persons from Enforced Disappearance.⁵⁶⁷

The Working Group also acknowledged Thailand's acceptance of international human rights obligations, including adoption of the Declaration:

Oman noted that Thailand had been among the first 48 nations to adopt the Universal Declaration of Human Rights in 1948, was party to many fundamental human rights treaties, and worked towards the protection of human rights at the regional and international level...⁵⁶⁸

However, as the first cycle of review was to focus on the human rights record of the State concerned in the preceding four years, this recommendation falls beyond the scope of the criteria for the review process.

Used properly, the Declaration can be a key tool for upholding universal coverage of all human rights in all States subject to review, thus reflecting the principle of the indivisibility and interrelatedness of all human rights. In cases where a State under Review has not ratified international human rights instruments, recommending States can rely on the Declaration to widen the scope of accountability. However, States that rely solely on soft law (i.e. the Declaration) when the State concerned is a party to international human rights instruments risk weakening the strength of the obligation.

2. Legal Substance of 'Human Rights' Issues Raised during Universal Periodic Review

During the course of the first cycle of review, there have been instances where States have commented, posed questions or made recommendations on 'human rights' that are not found in any international human rights instruments. For example, States have

⁵⁶⁷ Human Rights Council, 'Report of the Working Group on the Universal Periodic Review: France,' 3 June 2008, A/HRC/8/47, p. 5, para. 9.

⁵⁶⁸ Human Rights Council, 'Report of the Working Group on the Universal Periodic Review: Thailand,' 8 December 2011, A/HRC/19/8, p. 9, para. 56.

made statements regarding the death penalty, national sovereignty, and extraterritorial legislation, which refer to State practices rather than human rights.

Egypt, for instance, made three identical recommendations to Afghanistan,⁵⁶⁹ the Central African Republic⁵⁷⁰ and Chad⁵⁷¹ on continuing to employ the death penalty, despite the majority of States that made statements with regard to the death penalty calling for a moratorium on or abolition of the death penalty. Egypt recommended that each State ‘continue exercising its sovereign right of implementing its penal code in conformity with universally agreed human rights standards, including the application of the death penalty.’ Egypt’s recommendation was accepted by Afghanistan and the Central African Republic; Chad gave no response. Its recommendation to China is similar: ‘In the light of its national realities, [China ought] to continue to implement the policy of strictly controlling and applying the death penalty.’⁵⁷² Egypt’s recommendation to Malaysia varies slightly. Egypt recommended that Malaysia should ‘continue exercising its sovereign right of adopting national legislation and the penal code, including the application of the death penalty.’⁵⁷³ China and Malaysia

⁵⁶⁹ Human Rights Council, ‘Report of the Working Group on the Universal Periodic Review: Afghanistan,’ 20 July 2009, A/HRC/12/9, p. 17, para.97.46. New Zealand (p. 9, para. 57), Sweden (p. 10, para. 60), Ireland (p. 10, para. 65), and Albania (p. 12, para. 81) called for Afghanistan to reduce maternal mortality due to the death penalty, abolish the death penalty, raised issues of fairness and due process in relation to the death penalty, and re-examination of the use of the death penalty, respectively.

⁵⁷⁰ Human Rights Council, ‘Report of the Working Group on the Universal Periodic Review: Central African Republic,’ 4 June 2009, A/HRC/12/2, p. 17, para. 74.24. Brazil (p. 5, para. 18), Portugal (pp. 5-6, para. 24), France (p. 7, para. 25) and Germany (p. 12, para. 54) called for the abolition of the death penalty, revision of domestic legislation to address the issue of the death penalty, removal of reference to the death penalty from the penal code and definitive abolishment of the death penalty, respectively.

⁵⁷¹ Human Rights Council, ‘Report of the Working Group on the Universal Periodic Review: Chad,’ 5 October 2009, A/HRC/12/5, p. 21, para. 87.13. Mexico (p. 9, para. 42) and Spain (pp. 12-13, para. 65) recommended a moratorium on the death penalty and abolition of the death penalty, respectively. They also issued a joint recommendation to ‘Readopt the moratorium on death penalty with a view of its total elimination. (Mexico) Declare new moratorium with a view to ensure definitive abolition of the death penalty (Spain),’ p. 21, para. 83.3.

⁵⁷² Human Rights Council, ‘Report of the Working Group on the Universal Periodic Review: China,’ 5 October 2009, A/HRC/11/25. The following statements were made by other States, opposing/questioning China’s use of the death penalty: expressing concern over the high number of executions and called for China to abolish the death penalty (Australia), p. 6, para. 27; emphasising the need for judicial reform with regard to the death penalty (Canada), pp. 6-7, para. 28; seeking explanations for use of the death penalty (the Netherlands), p. 7, para. 30; calling for a decreased number of executions and moratorium on the death penalty (Switzerland), p. 7, para. 31; recommending a moratorium on the death penalty with a view to eventually abolishing it (Mexico), pp. 8-9, para. 38; calling for greater transparency when the death penalty is used (the United Kingdom), pp.10-11, para. 42; and recommending the reduction of crimes that qualify for capital punishment, greater transparency and abolition of the death penalty (France), p. 14, para. 56.

⁵⁷³ Human Rights Council, ‘Report of the Working Group on the Universal Periodic Review: Malaysia,’ 5 October 2009, A/HRC/11/30. The following States objected to /commented on

likewise accepted Egypt's recommendations. Egypt took its support for the death penalty a step further and recommended that the Netherlands 'initiate a debate on the death penalty, with a view to reaching responsive conclusions consistent with international human rights law,'⁵⁷⁴ even though the Netherlands abolished the death penalty in 1870.⁵⁷⁵ The Netherlands rejected Egypt's recommendation, stating 'its firm opposition to the death penalty, and that its respect for human rights is basic in this position.'⁵⁷⁶

Although international human rights law does not expressly prohibit the death penalty, Article 6(2) of the International Covenant on Civil and Political Rights sets out limitations on its scope, stating that 'in countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime...' Whereas these limitations fall under the criteria set out for the review, recommending that a State continue to employ or reconsider employing the death penalty does not.

Another example of a statement unrelated to the human rights standards set out in the criteria for the review is the Democratic People's Republic of Iran's recommendation that the United States of America 'unconditionally abolish its extraterritorial legislation on human rights and other related matters against other countries, including the North Korea Human Rights Act, as these legislations represent 'flagrant breach of their sovereignty and insulting violations of the dignity and the rights of the people.'⁵⁷⁷ This two-pronged statement discusses the practices of the United States of America in maintaining extraterritorial legislation in North Korea (i.e. via the North Korea Human Rights Act), and exercising national sovereignty (in the recommending State of the Democratic People's Republic of Korea), rather than focusing on the improvement of human rights in the State under review. No international human rights instruments are

Malaysia's use of the death penalty: Israel recommended that the death penalty be abolished (p. 6, para. 21) and Sudan called for the death penalty to be applied only in accordance with the ICCPR (p. 6, para. 23).

⁵⁷⁴ Human Rights Council, 'Report of the Working Group on the Universal Periodic Review: The Netherlands,' 13 May 2008, A/HRC/8/31, p. 16, para. 78.2.

⁵⁷⁵ Richard C. Dieter, 'The Death Penalty and Human Rights: U.S. Death Penalty and International Law,' *Death Penalty Information Center*, p. 3, available at: www.deathpenaltyinfo.org/Oxfordpaper.pdf

⁵⁷⁶ Human Rights Council, 'Report of the Working Group on the Universal Periodic Review: The Netherlands,' 13 May 2008, A/HRC/8/31, p. 9, para. 39.

⁵⁷⁷ Human Rights Council, 'Report of the Working Group on the Universal Periodic Review: United States of America,' 4 January 2011, A/HRC/16/11, p. 17, para. 92.61.

referenced, nor are any specific human rights mentioned in the context of improving the situation at the ground level in the State under review. Similarly, Iran recommended that the United States of America ‘abolish its extrajudicial and extraterritorial laws and refrain from the application of unilateral measures against other countries.’⁵⁷⁸ Again, the recommendations fall beyond the scope of criteria set out for the review process to hold States accountable for their human rights obligations, rather than discuss State practices that have no express relevance to the improvement of human rights.

States must not use the interactive dialogue to raise issues that are not relevant to human rights as per the criteria set out in Resolution 5/1,⁵⁷⁹ or do not benefit the realisation of human rights, as in when statements are relevant to the criteria but do not have a positive impact. Depending on the number of speakers during the interactive dialogue, States could have as little as two minutes to raise issues and make meaningful recommendations. If speakers who take the floor have nothing substantial to contribute towards improving the situation of human rights at the ground level in the State under review, they should refrain from occupying time that could be better used by other States with concrete recommendations.

The above examples of misusing the Universal Periodic Review process to address issues other than those relevant to human rights are rare exceptions. Overall, most recommendations are human-rights focused, despite the recommending State often failing to cite the source of the standard or obligation as found in the criteria set out for the review.

3. Categorising Recommendations and Voluntary Commitments

In collaboration with UPR Info, Professor Edward McMahon developed the first method for categorising recommendations that emerge during the Universal Periodic Review process.⁵⁸⁰ His five pronged categorisation of recommendations is based on

⁵⁷⁸ *Ibid*, p. 17, para.92.57.

⁵⁷⁹ Human Rights Council, ‘Institution-building of the United Nations Human Rights Council,’ 18 June 2006, A/HRC/5/1, p. 1, para. 1. States are to be reviewed according to the *Charter of the United Nations*, the *Universal Declaration of Human Rights*, human rights treaties that they have signed or ratified, international humanitarian law (as applicable) and voluntary commitments and pledges.

⁵⁸⁰ Human Rights Council, ‘Report of the Working Group on Universal Periodic Review: Zimbabwe,’ A/HRC/19/14, 19 December 2011, p. 20, para. 94.25.

the degree of action required to fulfil the recommendation, with one requiring minimal action and five requiring specific action (see Figure 4),⁵⁸¹ which provides a tool for assessing the degree to which Universal Periodic Review is ‘action-oriented.’⁵⁸² In terms of its methodology, UPR Info explains that when a recommendation has two actions, the recommendation is generally categorised based on the first action. There are, however, some exceptions. When a recommendation ‘begins with two verbs,’ the second of the two is used to categorise the recommendation. A recommendation beginning with the words ‘continue and strengthen,’ for instance, is considered to be in category 4 (general action), rather than being classified in the third tier (continuing action).⁵⁸³ Lastly, ‘when a recommendation starts with a general action but then provides examples of specific actions, it is considered as category 5’ such as in ‘improve women’s rights by amending the family code.’⁵⁸⁴

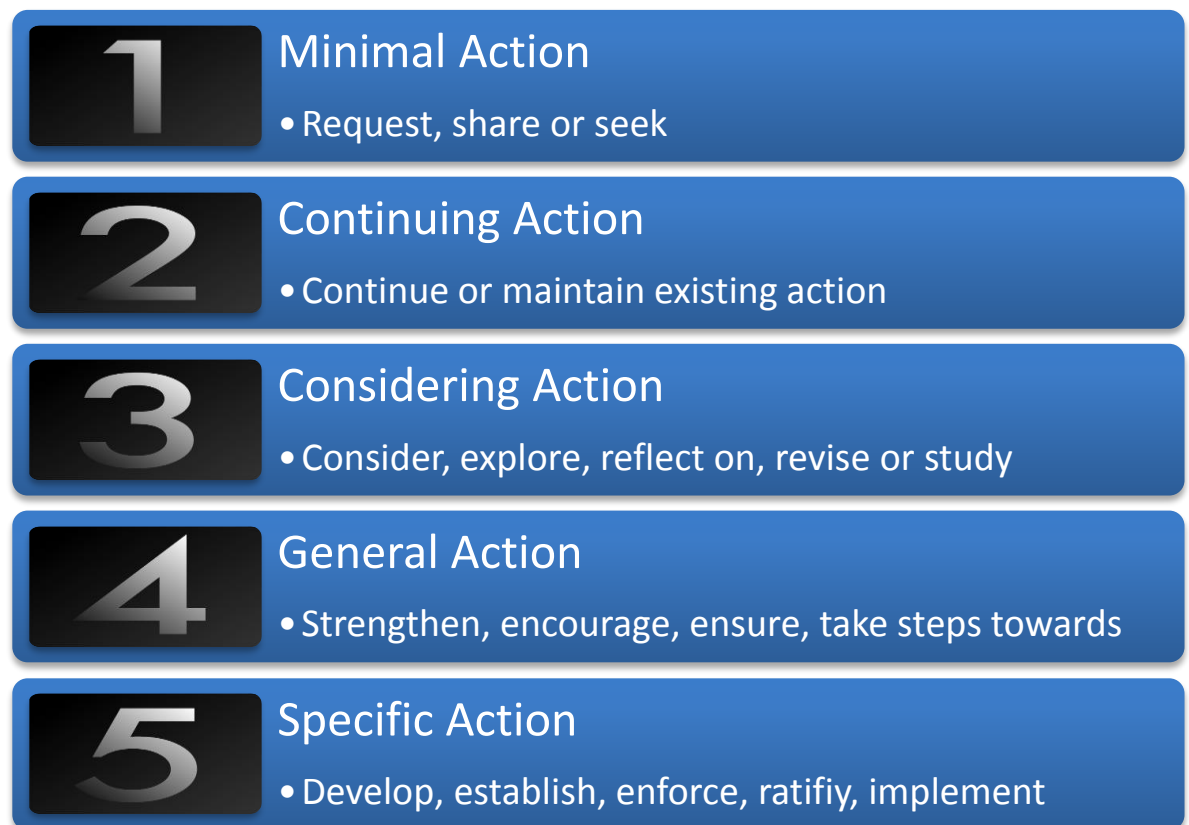
⁵⁸¹ UPR-info.org, ‘Action Category,’ 2010, available at: www.upr-info.org.

⁵⁸² Human Rights Council, ‘Institution-building of the United Nations Human Rights Council,’ 18 June 2006, A/HRC/5/1, p. 2, para. 3(d).

⁵⁸³ UPR-info.org, ‘Action Category,’ 2010, available at: www.upr-info.org.

⁵⁸⁴ *Ibid.*

Figure 4 Edward McMahon's Action Categories



The following examples provide some context for action categories one through five. Qatar's recommendation that Egypt 'share with other countries its experience in the education of persons with disabilities and in providing them with employment'⁵⁸⁵ falls within the minimal action category (1). A recommendation requiring the State concerned to continue action (2) is Belgium's recommendation that Zimbabwe 'pursue the current debate on the abolition of the death penalty in a transparent manner including with respect to civil society.'⁵⁸⁶ The recommendation that Grenada 'consider issuing a standing invitation to United Nations human rights procedures'⁵⁸⁷ falls within the third tier. Canada's recommendation that Angola 'take steps to ensure that its legislative and policy frameworks provide effective protections against all forms of violence faced by women, and that such protections are extended to all women, including internally displaced and refugee women, who are among the most vulnerable'⁵⁸⁸ falls into the general action category (4). An example of a specific action category (5) recommendation is Switzerland's recommendation that Cambodia 'adopt a law against corruption.'⁵⁸⁹

Professor McMahon developed the first quantitative system for categorising the quality of recommendations, which is a key consideration when viewing statistics on the number of recommendations a given State has implemented. If a State has accepted and subsequently implemented recommendations requiring minimal action, continuing action and considering action, but has failed to implement recommendations requiring general and specific action, the overall statistics could still insinuate that the State is highly cooperative with the review process. Applying this five-pronged categorisation of recommendations could reveal that even a State that has accepted and implemented a high number of recommendations could have also taken very little action to improve the situation of human rights at the ground level.

⁵⁸⁵ Human Rights Council, 'Report of the Working Group on Universal Periodic Review: Egypt,' A/HRC/14/17, 26 March 2010, p. 16, para. 65.

⁵⁸⁶ Human Rights Council, 'Report of the Working Group on Universal Periodic Review: Zimbabwe,' 19 December 2011, A/HRC/19/14, p. 21, para. 92.25.

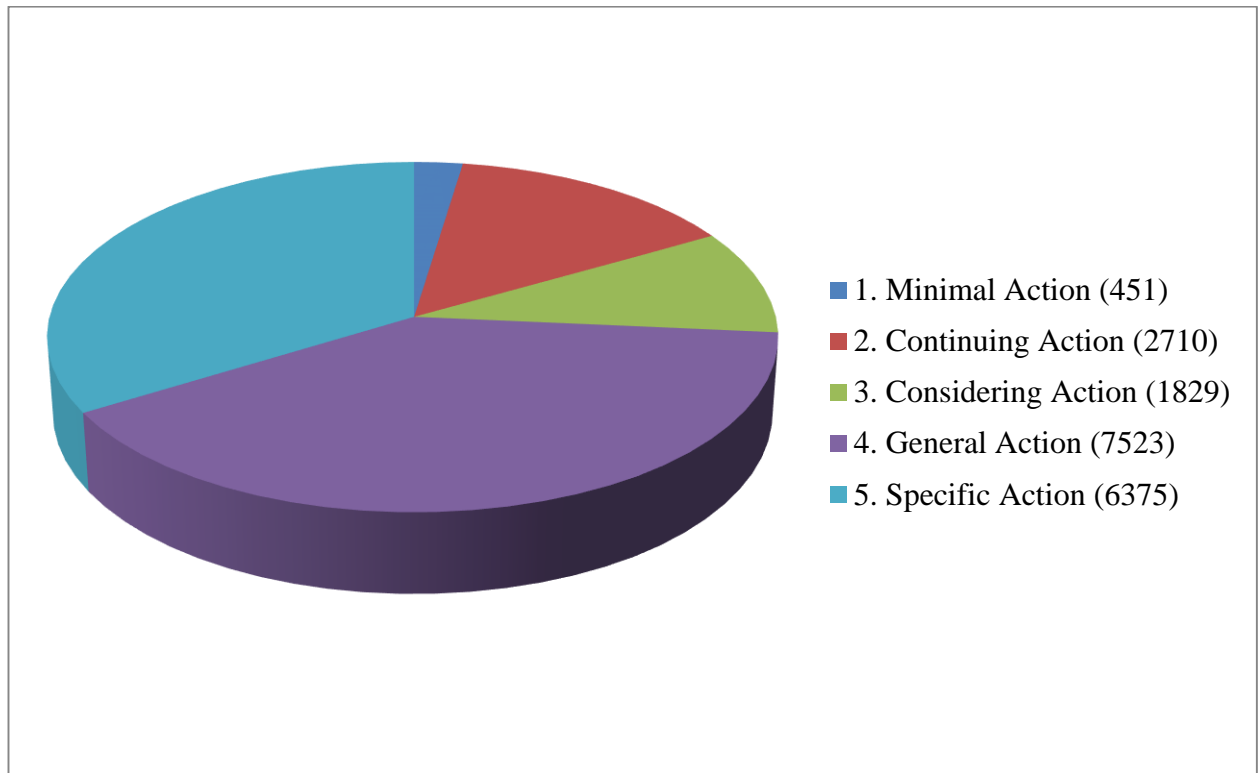
⁵⁸⁷ Human Rights Council, 'Report of the Working Group on Universal Periodic Review: Grenada,' A/HRC/15/12, 16 June 2010, p. 12, para. 71.23 (Brazil).

⁵⁸⁸ Human Rights Council, 'Report of the Working Group on Universal Periodic Review: Angola,' A/HRC/14/11, 24 March 2010, p. 16, para. 56.

⁵⁸⁹ Human Rights Council, 'Report of the Working Group on Universal Periodic Review: Cambodia,' A/HRC/13/4, 4 January 2010, p. 16, para. 36.

Clear recommendations requiring specific action are most likely to yield the best results in terms of influencing the human rights situation at the ground level in a positive manner, because specific actions necessitate specific outcomes that can be monitored and followed-up on by recommending States and relevant stakeholders. Conversely, recommendations requiring minimal, continuing, considering or general action may not produce measurable outcomes. In these cases, States could claim to have implemented these recommendations, but there are no clear outcomes to demonstrate that such implementation has taken place.

Chart 5 Number of Recommendations per Action Category (Sessions 1-11,
Cycle 1: 18,888 Total Recommendations)



Although the level of action required to implement a given recommendation is an important consideration when assessing its quality, this system of categorisation does not consider whether recommendations are relevant to the obligations of the State under review or meet the criteria set out for the review process. States are to be held accountable under the United Nations Charter, the Universal Declaration of Human Rights, any human rights treaties the given State is a party to, applicable international humanitarian law and voluntary commitments. Unless the criteria set out for the review process is amended, it does not include encouraging States to ratify outstanding international human rights treaties. McMahon's method of categorisation classifies recommendations regarding ratification of outstanding treaties as requiring specific action. As shown in Chart 5, the highest number of recommendations fall under the general action (7523) and specific action (6375) categories during the first eleven sessions of the first cycle of review.⁵⁹⁰ However, 2082 of the 6375 recommendations requiring specific action refer to ratification of an outstanding treaty, which does not fall under the criteria set out for the review process.⁵⁹¹

As detailed in Chapter 6 on State and Regional Behaviour during Universal Periodic Review, States have used their speaking time during the interactive dialogue to praise other States where no recommendation is made. Even if such praise is made with a view to identifying best practices for other States to learn from, no action is required by the State under review. As such, an additional category should be developed to account for statements devoid of any sort of recommendation where no action is required.

Another factor is that many recommendations are repetitive. When several States make similar recommendations during the review process, this can obscure the type of measures the State is required to take in order to fulfil its obligations should the recommendations be accepted, and can affect the statistics regarding the number of accepted recommendations and how many recommendations the State subsequently implements. A high number of recommendations can also intimidate least developed countries, especially when such States lack the resources necessary to implement them, which can affect whether such States continue to cooperate with the review

⁵⁹⁰ *Ibid.*

⁵⁹¹ UPR Info, 'Statistics of UPR Recommendations,' 2012, available at: www.upr-info.org/database/statistics/

process in the long-term. If several recommendations essentially request the same action, they should not be counted twice to prevent skewing the statistical results of the number of recommendations requiring minimal, continuing, considering, general or specific action. Whilst McMahon's method of categorisation contributes to the overall analysis of recommendations according to the level of action required on part of the State concerned, it represents but one tier of evaluation.

Another method for categorisation is the type of outcome the recommendation seeks to achieve. All outcomes relating to improving the realisation of human rights at the ground level should involve amending, developing or abolishing domestic legislation and policies to reflect international human rights obligations and developing, implementing or improving related programmes (see Figure 5). Recommendations under these categories correspond with specific, measurable outcomes, provided strong language is used, such as adopt, amend, develop, implement, or enforce, rather than weaker language such as consider, continue and reflect upon.⁵⁹² Legislation and policy should translate into Government practice. National human rights institutions could monitor how relevant legislation, policies, and programmes translate into practice. An independent judiciary would be responsible for enforcing violations of legislation, whereas a Human Rights Commission would enforce policies and an independent auditor would review practices. The Government, in turn, would report on developments during the next cycle of review.⁵⁹³

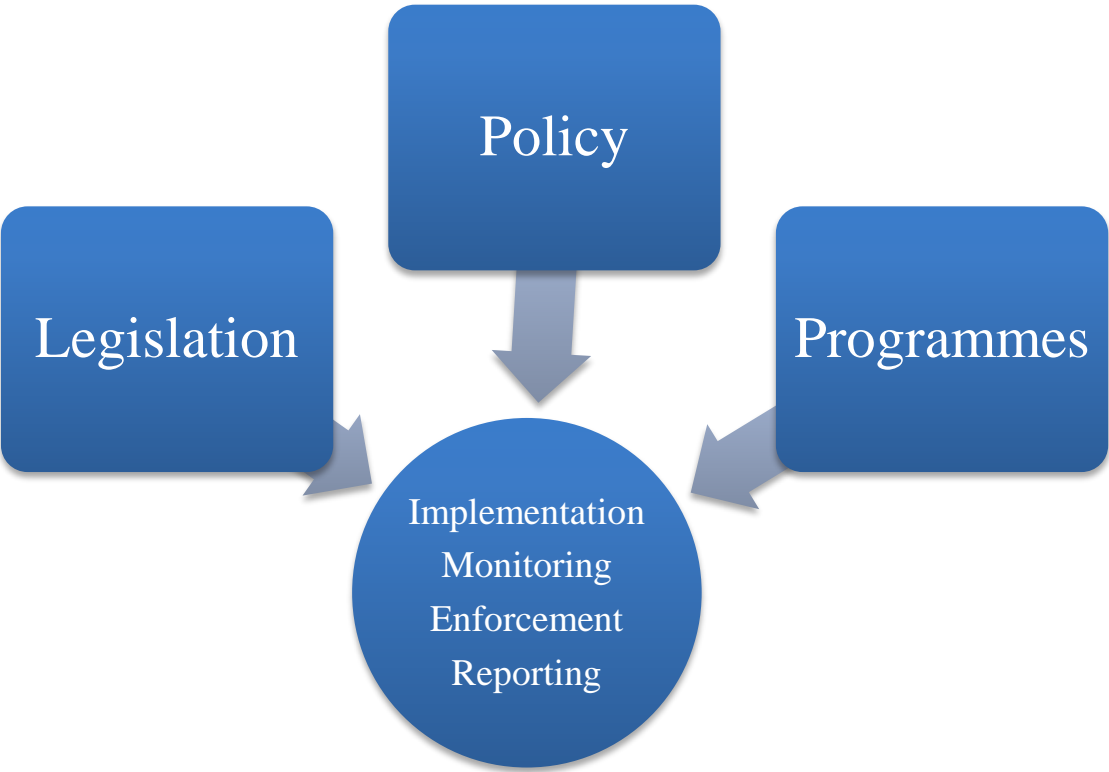
Canada, for instance, already has the necessary institutional infrastructure, including a national human rights institution, national and provincial human rights commissions and an ombudsman/auditor general. Establishing these necessary mechanisms can be costly and time-consuming, which makes it less attainable for least developed countries to achieve in the short-term. Funding for least developed countries should focus on developing the human rights infrastructure necessary to implement, monitor and enforce human rights obligations to ensure later obligations are implemented in the most effective way from the onset, rather than wasting limited resources on

⁵⁹² UPR Info, 'Methodology – Responses to Recommendations,' 2010, available at: www.upr-info.org/IMG/...Methodology_Responses_to_recommendations.pdf

⁵⁹³ Kedzia, Zdzislaw, 'United Nations Mechanisms to Promote and Protect Human Rights,' in Symonides, Janusz (ed), *Human Rights: International Protection, Monitoring, Enforcement* (Ashgate, Warsaw 2003), pp. 334-339.

implementation techniques that may not work in the long-term. Recommendations should thus be realistic, measurable, action-oriented and progressive.

Figure 5 Categorising Recommendations According to Type of Outcome



Recommendations could be categorised according to whether they can be implemented in the short-term (up to 2 years following the review), medium-term (before the next cycle of review), long-term (within the next 5-10 years), or continually, which would also assist in monitoring implementation of a given recommendation. States should be able to implement short-term recommendations, including those requiring consideration, evaluation, further study or reflection, within one year following their respective review. States could feasibly implement medium-term outcomes, including programme development, and amending or adopting legislation or policies, before the next cycle of review, whereas long-term recommendations, such as building the institutional infrastructure required to monitor, enforce and report on human rights obligations, could potentially extend beyond the next cycle of review, particularly in least developed countries. Some recommendations require continual implementation, such as enforcing legislation, policies, and international obligations, administering and maintaining programmes and reporting to the international treaty bodies.

Categorising recommendations in this way would assist with accurately measuring whether States have implemented the outcome of the review within a reasonable timeframe following the review and reveal the level of action required to do so. For instance, short-term recommendations often require minimal, continuing, considering or general action, which McMahon's model of action categories considers as separate. Medium-term, long-term and ongoing recommendations are generally more specific and require greater resources, time, and effort in order to implement; they are also the types of recommendations that will yield the most significant outcomes in terms of affecting positive change in the situation of human rights at the ground level. In order to achieve this, recommendations should be as specific as possible, referencing the adoption, amendment, monitoring, or enforcement of legislation and policies alongside the implementation of and reporting on specific outcomes stemming from programmes, thus allowing the State under review to identify concrete outcomes that can be implemented within a given timeframe.

Understanding the normative framework is a necessary prelude to evaluating recommendations arising during the Universal Periodic Review process, particularly when determining whether recommendations coincide with the criteria set out for the

review process. Although the criteria stipulates that States are to be reviewed according to their adherence to the Charter of the United Nations, the Universal Declaration of Human Rights, international human rights treaties that States are a party to, applicable international humanitarian law, and voluntary commitments, few recommendations make an express connection to the criteria. States have also raised recommendations that fall beyond the scope of the criteria.

Although Professor McMahon's method of categorising recommendations arising from the Universal Periodic Review based on action required provides a necessary layer of analysis when evaluating the types of recommendations issued, there are other methods of categorisation that are equally important to consider when evaluating the quality of recommendations and State implementation. Analysis should extend beyond the action required to implement a recommendation and likewise consider the technical and financial needs arising from accepted recommendations; the type of outcome to be achieved, and the timeframe required for implementing the said outcome. These additional tiers of analysis would clarify whether States are indeed investing the requisite resources, time, and effort into improving the human rights situation in their respective countries.

Evaluating recommendations and voluntary commitments in the context of their legal substance and the normative framework for the Universal Periodic Review process reveals that few recommending States and States under review refer to the criteria for the review. Whilst States under review are to be held to account for *existing* human rights obligations, many recommendations centred on ratification of outstanding obligations. Most recommendations did not cite the source of the obligation contained therein. Other recommendations were more political than human rights oriented. Much can be learned from categorising recommendations and voluntary commitments, including the level of action and length of time or resources required for implementation, which can be used to identify trends, strengths and weaknesses per State and regional group.

Chapter 8

Implementation of and Follow-up on Accepted Recommendations and Voluntary Commitments

One of the primary objectives of the review process is to fulfil ‘State’s human rights obligations and commitments and assessment of positive developments and challenges faced by the State.’⁵⁹⁴ State implementation of accepted recommendations and voluntary commitments is a cornerstone of the review process, as this is the stage where improvements to the human rights situation begin to occur at the ground level. The first part of this chapter discusses State capacity to implement recommendations and reviews the resources available to States that lack the capacity to implement recommendations. Chapter 8 also outlines examples of best practices regarding implementation arising from the first cycle of review and explains the role of relevant stakeholders in ensuring States implement their accepted recommendations and voluntary commitments through rigorous follow-up.

1. State Capacity to Implement Recommendations

Reviewed States are responsible for implementing accepted recommendations and voluntary commitments, but may not always have the financial or technical capacity to do so due to lack of resources. Irrespective of whether States are willing to accept recommendations and make voluntary commitments to improve the human rights situation at the ground level, the fulfilment of such commitments are contingent on that State having sufficient resources. According to the CIA World Factbook, the per capita gross domestic product (GDP) in the wealthiest State is 470 times higher than in the least wealthy State,⁵⁹⁵ nearly 10 times higher than the average GDP,⁵⁹⁶ and 17 times as high as the median.⁵⁹⁷ Corresponding with the vast disparity between the GDP of the wealthiest States and the least wealthy States, there is a significant gap between

⁵⁹⁴ Human Rights Council, ‘Institution-building of the United Nations Human Rights Council,’ 18 June 2006, A/HRC/5/1, p. 3, para. 4(b).

⁵⁹⁵ The per capita GDP in Liechtenstein was \$141,100 in 2008, whereas the GDP in the Democratic Republic of Congo was \$300 in 2011. Central Intelligence Agency, ‘The World Factbook,’ available at: <https://www.cia.gov/library/publications/the-world-factbook/rankorder/2004rank.html>

⁵⁹⁶ *Ibid.* The CIA Factbook does not include figures for the Republic of Korea, Columbia, Monaco or South Sudan, therefore, the average and median presented may vary.

⁵⁹⁷ *Ibid.*

the financial and technical capacities of these States to implement recommendations and commitments arising from the Universal Periodic Review process.⁵⁹⁸ One of the principles of the review is that ‘without prejudice to the obligations contained in the elements provided for in the basis of review, take into account the level of development and specificities of countries.’⁵⁹⁹ This is achieved, in part, through the Funds available to support States in cooperating with the Universal Periodic Review process, which are the Voluntary Trust Fund for Participation in the Universal Periodic Review, the Voluntary Fund for Financial and Technical Assistance for the Implementation of the Universal Periodic Review, and the United Nations Voluntary Fund for Technical Cooperation in the Field of Human Rights. States can only draw from the final two Funds to support implementation of recommendations stemming from the Universal Periodic Review process, as the Voluntary Fund for Participation in the Universal Periodic Review Mechanism is reserved for the travel and training of State delegations to attend and participate in the review.⁶⁰⁰

In the Human Rights Council’s report on its sixteenth session, the Council calls for additional voluntary contributions to support each of these funds, which are further detailed below.⁶⁰¹ Wealthier States in a position to provide financial assistance to States that lack the financial and technical capacity to implement commitments and recommendations have the option to support several funds that support the Universal Periodic Review process.

1.1 Role of the Voluntary Fund for Financial and Technical Assistance for the Implementation of the Universal Periodic Review

Resolution 6/17 established the Voluntary Fund for Financial and Technical Assistance to provide ‘a source of financial and technical assistance to help countries implement recommendations emanating from the universal periodic review in

⁵⁹⁸ David Frazier, ‘Evaluating the Implementation of UPR Recommendations: A Quantitative Analysis of the Implementation Efforts of Nine UN Member States,’ Syracuse University, August 2011, p. 16.

⁵⁹⁹ Human Rights Council, ‘Institution-building of the United Nations Human Rights Council,’ 18 June 2006, A/HRC/5/1, p. 2, para. 3(l).

⁶⁰⁰ Human Rights Council, ‘Establishment of Funds for the Universal Periodic Review Mechanism of the Human Rights Council,’ 28 September 2007, A/HRC/RES/6/17, p. 1, para.1.

⁶⁰¹ Office of the High Commissioner for Human Rights, ‘Terms of Reference for the Voluntary Fund for Financial and Technical Assistance for the Implementation of the Universal Periodic Review,’ 2009, available at: http://www.ohchr.org/Documents/HRBodies/UPR/TOR_TF_for_TC_assistance_UPR.pdf, p. 3, para. 14.

consultation with, and with the consent of, the country concerned.⁶⁰² According to the terms of reference for the Voluntary Trust Fund for Financial and Technical Assistance, the Fund provides assistance for the following purposes:

- a. the integration of the UPR outcomes into United Nations common country programming documents, including the U.N. Development Assistance Framework (UNDAF); and the dissemination of information on UPR outcomes with a view to mobilizing support for the countries concerned;
- b. the coordination of the United Nations, in support of the UPR outcomes, including the conduct of multilateral and bilateral action needs assessments as well as the formulation of programmes and projects aimed at implementing UPR outcomes;
- c. the exchange of information and the sharing of best practices, including through the organization of regional and sub-regional meetings, seminars, consultations and other interactions;
- d. the development of a national capacity and expertise for the implementation of the UPR outcomes;
- e. the co-funding of programmes and projects aimed at implementing the UPR outcomes;
- f. the regular follow up, with national bodies and institutions concerned, of action taken to implement the UPR recommendations.⁶⁰³

‘States, intergovernmental and non-governmental organizations or private institutions and individuals’ are permitted to make contributions to the Fund for Financial and Technical Assistance, subject to approval by authorised officials.⁶⁰⁴ Columbia,⁶⁰⁵ the Russian Federation,⁶⁰⁶ United Kingdom,⁶⁰⁷ Germany⁶⁰⁸ and Morocco⁶⁰⁹ made

⁶⁰² Human Rights Council, ‘Follow-up to the Human Rights Council Resolution 16/21 with regard to Universal Periodic Review,’ 19 July 2011, A/HRC/DEC/17/119, (a-f) are directly quoted.

⁶⁰³ Quoted directly from Office of the High Commissioner for Human Rights, ‘Terms of Reference for the Voluntary Fund for Financial and Technical Assistance for the Implementation of the Universal Periodic Review,’ 2009, available at: http://www.ohchr.org/Documents/HRBodies/UPR/TOR_TF_for_TC_assistance_UPR.pdf, pp. 1-2, para. 6 (a-f).

⁶⁰⁴ *Ibid.*, p. 2, para.8.

⁶⁰⁵ Human Rights Council, ‘Compilation Prepared by the Office of the United Nations High Commissioner for Human Rights, in Accordance with Paragraph 10 of Human Rights Council Resolution 16/22,’ 26 December 2011, A/HRC/19/50, Annex I. Columbia contributed \$40,000 from 2008-2009.

⁶⁰⁶ *Ibid.* The Russian Federation contributed \$450,000 from 2008-2009 and \$150,000 in 2010-2011.

⁶⁰⁷ *Ibid.* The United Kingdom contributed \$45,326 from 2008-2009 and \$133,707 in 2010-2011.

⁶⁰⁸ *Ibid.* Germany contributed \$148,148 from 2010-2011.

⁶⁰⁹ *Ibid.* Morocco pledged \$500,000 from 2010-2011.

voluntary contributions to the Fund between 1 January 2008 and 23 November 2011.⁶¹⁰ The Office of Internal Oversight Services and Board of Auditors ‘conduct independent internal audits of the Trust Fund.’⁶¹¹ The Certifying Officer of the Trust Fund is responsible for ensuring that expenditures drawing from the Fund adhere to the United Nations Financial Regulations and Rules, without falling beyond the scope of the intended purpose or amounts allotted.⁶¹²

The Council encourages States requiring assistance to contact the Office of the High Commissioner for Human Rights and relevant United Nations agencies, special procedures and stakeholders and trusts these entities to cooperate with such requests.⁶¹³ The Office of the High Commissioner for Human Rights followed up with this request in submitting a ‘compilation of responses from States and stakeholders to a questionnaire on the Voluntary Fund for Financial and Technical Assistance’⁶¹⁴ given to States and stakeholders⁶¹⁵ about the Fund’s contribution to the implementation of accepted recommendations⁶¹⁶ and the ‘sustainability of and accessibility to’ the Fund.⁶¹⁷ Unfortunately, only ten States and eleven stakeholders responded, thus the comments provided are not fully representative of the opinions held by the full range of States and stakeholders involved in the Universal Periodic Review process.

Based on the challenges faced by countries struggling to meet their obligations, Guyana explained that ‘obligations will not be fulfilled, or fulfilled in a timely manner, because of the paucity or lack of necessary mechanisms, poor communication and dissemination, complex political situations, lack of capacity and resources at the institutional level, or difficulties of implementation due to competing and immediate demands on limited resources.’⁶¹⁸ In order to fulfil its intended purpose, the Fund should be available to ‘least developed countries, newly emerging or restored

⁶¹⁰ *Ibid.*

⁶¹¹ *Ibid.*, p. 3, para.16.

⁶¹² *Ibid.*, para.11, p. 2.

⁶¹³ *Ibid.*, para.11, p. 3.

⁶¹⁴ Human Rights Council, ‘Compilation Prepared by the Office of the United Nations High Commissioner for Human Rights, in Accordance with Paragraph 10 of Human Rights Council Resolution 16/22,’ A/HRC/19/50, 26 December 2011.

⁶¹⁵ *Ibid.*, fn. 1, p. 3. The term ‘stakeholders’ refers to ‘NGOs, national human rights institutions, human rights defenders, academic institutions and research institutes, regional organizations, as well as civil society representatives.’

⁶¹⁶ *Ibid.*, paras. 5-17.

⁶¹⁷ *Ibid.*, paras. 18-29.

⁶¹⁸ *Ibid.*, p. 4, para.7.,.

democracies, countries where there has been a regression in human rights as well as small and vulnerable States, which face particular challenges in attaining the realization of human rights.’⁶¹⁹

State and stakeholder responses to the questionnaire issued by the Office of the High Commissioner for Human Rights revealed that although ‘a lack of financial and technical resources to implement recommendations hindered the identification and delineation of accomplishment strategies, goals and progress indicators,’⁶²⁰ several States and stakeholders have suggestions to maximise the outcomes achieved through the use of available resources.

Some suggestions made by States and stakeholders negate the intended purpose of the Fund by focusing on monitoring,⁶²¹ follow-up⁶²² (including regular meetings to review progress),⁶²³ dissemination of information on accepted recommendations,⁶²⁴ promoting awareness,⁶²⁵ providing training and sharing best practices.⁶²⁶ As imperative as it is to achieve these ends, it does not assist developing States in *implementing* accepted recommendations and voluntary pledges. If a State does not have the financial or technical capacity to implement recommendations in the first place, no amount of monitoring, follow-up, disseminating information or awareness raising will change that. Funds intended to provide financial and technical support to States in implementing recommendations should remain as such. Monitoring, follow-up, dissemination of information and raising awareness are separate, albeit important, issues that should not fall under the scope of this Fund. It could be argued that these issues are applicable when accepted recommendations to be implemented centre on monitoring, follow-up, dissemination of information, training, sharing best practices or awareness raising, but if a State has the resources to meet recommendations relating

⁶¹⁹ Human Rights Council, ‘Compilation Prepared by the Office of the United Nations High Commissioner for Human Rights, in Accordance with Paragraph 10 of Human Rights Council Resolution 16/22,’ 26 December 2011, A/HRC/19/50, p. 4, para.8 (Guyana).

⁶²⁰ *Ibid*, p. 3, para.5 (Columbia).

⁶²¹ *Ibid*, p. 5, para. 17 (UPR-info), p. 5, para. 11 (Mauritius).

⁶²² *Ibid*, p. 3, para.5 (Columbia); p. 4, paras. 7-8 (Guyana).

⁶²³ *Ibid*, p. 5, para.13 (Uganda).

⁶²⁴ *Ibid*, p. 3, para. 5 (Columbia); p. 5, para. 13 (Uganda); p. 5, para. 12 (Sweden).

⁶²⁵ *Ibid*, para.5 (Columbia).

⁶²⁶ *Ibid*, p. 5, para.15 (International-Lawyers.org); p. 5, para. 11 (Mauritius).

to economic, social and cultural rights or civil and political rights, it would not require the use of the Fund to facilitate monitoring, etc.

Whereas Civicus proposed that funding should be available to stakeholders, as well as States,⁶²⁷ United for Intercultural Action (Prague Office) recommended that additional funding be made available to support the ‘engagement of civil society organizations in improving awareness of the UPR and the implementation of the recommendations.’⁶²⁸ Whilst engaging civil society in implementing recommendations can be an excellent way to build capacity internally,⁶²⁹ the responsibility for implementing recommendations rests with States. As such, the allocation of funds should be left to the State’s discretion, provided the funds are used only for the purposes of implementation.

Sweden recommended that the Fund should include recommendations that States have rejected, ‘provided such recommendations were in line with international human rights standards.’⁶³⁰ However, Sweden did not elaborate on how these recommendations would be implemented without the consent of the State, which is responsible for implementing recommendations. If the Fund is not robust enough to support least developed States in implementing accepted recommendations, extending the Fund to rejected recommendations is not feasible in terms of resources, nor is it practical in terms of implementation.

Japan provided the most concrete and focused recommendations, suggesting the following changes be implemented from the second cycle of review onwards:

- a. each State should make its own best efforts to follow up on its recommendations and where these efforts are inhibited by a lack of resources and/or know-how, relevant United Nations agencies including OHCHR are encouraged to provide assistance;
- b. each State should group its accepted recommendations into those recommendations that it can implement on its own (first group) and those recommendations for whose implementation international assistance is

⁶²⁷ Human Rights Council, ‘Compilation Prepared by the Office of the United Nations High Commissioner for Human Rights, in Accordance with Paragraph 10 of Human Rights Council Resolution 16/22,’ 26 December 2011, A/HRC/19/50, p. 5, para.15.

⁶²⁸ *Ibid*, para.16.

⁶²⁹ *Ibid*, para.14 (Civicus).

⁶³⁰ *Ibid*, para.12.

required (second group), and provide this information to the Secretariat for circulation. In relation to the second group of recommendations, the State should call on bilateral donors and relevant United Nations agencies, including OHCHR, for assistance. Those States that made recommendations that fall into the second group should seriously consider extending assistance for their implementation;

- c. each State should submit to the Secretariat, no later than two years after the adoption of its UPR outcome, a concise follow-up report (mid-term report) on the State of implementation of its accepted recommendations, which should be disseminated to all States;
- d. OHCHR should be requested to create a list of the projects which require further international assistance based on the information submitted by States in their mid-term follow-up reports; and (e) the VFFTA should be enhanced to support the UPR follow-up.⁶³¹

Other relevant recommendations centred on strengthening the coordination mechanisms,⁶³² and enhancing constructive dialogue among States, through collaboration and cooperation to establish agreements based on country priorities to facilitate implementation.⁶³³ Guyana recommended that the Fund become a component of the United Nations Common Country programming cycles, as well as the United Nations Development Assistance Framework (UNDAF).⁶³⁴ Mauritius proposed that States facilitate implementation of recommendations by designating a national focal point to coordinate implementation of recommendations, in part, through drawing on ‘strategic partnerships with educational institutions, NGOs and CBOs, ministries, the private sector, the media and journalists.’⁶³⁵ The coordination of such efforts via a national focal point could enhance State capacity building and reduce financial strain on an already struggling State.

Sweden further proposed that the Human Rights Council review the ‘internal and external efficiency and operability’⁶³⁶ of the Fund, in addition to the annual reports submitted by the Office of the High Commissioner for Human Rights. Indeed, the

⁶³¹ Human Rights Council, ‘Compilation Prepared by the Office of the United Nations High Commissioner for Human Rights, in Accordance with Paragraph 10 of Human Rights Council Resolution 16/22,’ 26 December 2011, A/HRC/19/50, pp. 5-6, para.10.

⁶³² *Ibid.*, p. 4, para.6 (Denmark).

⁶³³ *Ibid.*, pp. 5-6, para.18.

⁶³⁴ *Ibid.*, p. 4, para.9.

⁶³⁵ *Ibid.*, p. 5, para.11.

⁶³⁶ *Ibid.*

Human Rights Council must take additional steps towards ensuring the Fund produces maximal results and meets its intended purpose.

Denmark recommended that able States make additional financial contributions to the Fund.⁶³⁷ Similarly, Guyana proposed broadening the donor base by seeking donations from ‘non-traditional donor countries’⁶³⁸ and further underscored the importance of timely donations and pledges, enabling the ‘OHCHR and beneficiaries to effectively and efficiently plan and implement the programmed activities.’⁶³⁹ Regular appeals should be made for contributions to the Fund,⁶⁴⁰ including through appealing to developed States and independent donors,⁶⁴¹ ‘forming strategic partnerships with the private sector and the media’⁶⁴² and seeking sponsorship.⁶⁴³ Whilst each of these proposals has the potential to garner additional funds, the fact remains that the Fund is not sustainable because it relies on voluntary contributions that vary from year to year. This means States in need of assistance are unable to rely on sustained funding to implement long-term recommendations.

Guyana expressed concern over the reliance of the Office of the High Commissioner for Human Rights on the Fund for ‘core and mandated activities that ideally should remain with the regular budget,’⁶⁴⁴ rather than drawing from an already limited Fund earmarked specifically for assisting States with implementing recommendations stemming from the review process. Japan suggested that the ‘OHCHR should also provide an adequate explanation of the status of allocation and disbursement of the VFFTA in order to ensure transparency of the Fund’s activities.’⁶⁴⁵ Although the Office of the High Commissioner for Human Rights lists contributions to the Fund and the States that benefit from them, specific amounts allocated to each State remains unclear.⁶⁴⁶

⁶³⁷ Human Rights Council, ‘Compilation Prepared by the Office of the United Nations High Commissioner for Human Rights, in Accordance with Paragraph 10 of Human Rights Council Resolution 16/22,’ 26 December 2011, A/HRC/19/50, p. 4, para.6.

⁶³⁸ *Ibid.*, p. 6, para.19.

⁶³⁹ *Ibid.*

⁶⁴⁰ *Ibid.*, p. 6, para.22 (Japan).

⁶⁴¹ *Ibid.*, p. 7, para.26 (Uganda).

⁶⁴² *Ibid.*, p. 6, para.23 (Mauritius).

⁶⁴³ *Ibid.*

⁶⁴⁴ *Ibid.*, para.20.

⁶⁴⁵ *Ibid.*, para.22.

⁶⁴⁶ Office of the High Commissioner for Human Rights, ‘Office of the High Commissioner for Human Rights, 2011 Report,’ available at:

In order to ensure the Fund is accessible to States in need in a timely manner, ‘a lengthy needs assessment should be avoided,’⁶⁴⁷ giving priority to States experiencing the greatest financial and challenges in implementing recommendations. Whilst Japan suggested administering Funds based on projects requiring international assistance,⁶⁴⁸ Sweden proposed that States seeking funding should submit action plans, including realistic timelines, for the implementation of recommendations.⁶⁴⁹ Timor-Leste added that funding should be allocated according to needs stemming from the implementation of specific programmes.⁶⁵⁰ The recommendations advanced by Japan, Sweden and Timor-Leste, in effect, would make the Fund less accessible by including additional stipulations that States in need must meet before becoming eligible to receive funds, which could delay the implementation of high priority recommendations. Another Fund to which States can apply for support in implementing recommendations is the Voluntary Fund for Technical Cooperation in the Field of Human Rights.

1.2 Role of the Voluntary Fund for Technical Cooperation in the Field of Human Rights

Established in 1987 by the Secretary-General and administered by the High Commissioner for Human Rights since, the Voluntary Fund for Technical Cooperation in the Field of Human Rights draws from voluntary contributions to deliver technical cooperation to requesting States under the Technical Cooperation Programme and can be used to support the outcome of the review process. Human Rights Council resolution 20/34 clarified that these funds ‘should not be competing... but rather complement each other’⁶⁵¹ and acknowledges that the Technical Cooperation Fund ‘has been used for universal periodic review follow-up activities and the implementation of review recommendations at the country and regional levels.’⁶⁵²

http://www2.ohchr.org/english/ohchrreport2011/web_version/ohchr_report2011_web/allegati/18_Funds_administred_by_OHCHR.pdf

⁶⁴⁷ *Ibid*, para.21 (Guyana).

⁶⁴⁸ *Ibid*, para.22.

⁶⁴⁹ *Ibid*, p. 6, para.24.

⁶⁵⁰ *Ibid*, pp. 6-7, para.25.

⁶⁵¹ Human Rights Council, ‘Report of the Chairperson of the Board of Trustees of the United Nations Voluntary Fund for Technical Cooperation in the Field of Human Rights,’ 1 June 2012, A/HRC/20/34, para. 24.

⁶⁵² *Ibid*.

State contributions to the Voluntary Fund for Technical Cooperation far exceed those made to the Voluntary Fund for Financial and Technical Assistance for the Implementation of the Universal Periodic Review and the Voluntary Fund for Participation in the Universal Periodic Review. In 2011, for instance, States made a total of \$13,372,147 in contributions towards the Voluntary Fund for Technical Cooperation, \$723,830 for the Financial and Technical Assistance and \$116,911 in support of the Voluntary Trust Fund.⁶⁵³ There are a few possible explanations for why there is such a vast difference in voluntary State contributions to the funds. First, States have the option to earmark contributions to the Voluntary Fund for Technical Cooperation, thus remaining ‘in control’ of how their contribution is used, whereas no such option is available for the funds to support participation in the review and implementation of recommendations. Another possible reason is that the technical cooperation fund has been in operation for decades longer than the Universal Periodic Review funds. States that have traditionally contributed towards the technical cooperation fund may not see the need to contribute to the other funds if States in need of assistance can draw from the technical cooperation fund to support recommendations stemming from the review process. According to the 2011 report of the Office of the High Commissioner for Human Rights,

activities implemented through the Fund have resulted in: efforts at the country level to incorporate international human rights standards into national laws, policies and practices; the establishment of more sustainable national capacities to adhere to these standards; strengthened administration of justice; greater emphasis on the development of human rights education programmes; the establishment of responsive national human rights institutions...and the development of national plans of action for the promotion and protection of human rights.⁶⁵⁴

Any of the above activities would support State implementation of accepted recommendations and voluntary commitments arising from the review. In cases where the Voluntary Fund for Financial and Technical Assistance for the Implementation of the Universal Periodic Review and the Voluntary Fund for Participation in the

⁶⁵³ Office of the High Commissioner for Human Rights, ‘Office for the High Commissioner for Human Rights: 2011 Report,’ p. 155-156, available at: http://www2.ohchr.org/english/ohchrreport2011/web_version/ohchr_report2011_web/allegati/18_Funds_administred_by_OHCHR.pdf.

⁶⁵⁴ *Ibid*, p. 154.

Universal Periodic Review are insufficient, States should look to the Voluntary Fund for Technical Cooperation for added support.

2. Implementation of Accepted Recommendations and Voluntary Commitments following the First Cycle of Review

The purpose of the Universal Periodic Review process is to encourage States to adopt measures to ensure compliance with international human rights obligations through the implementation of accepted recommendations and voluntary commitments arising from previous cycles of review. Whilst recommendations during the first cycle of review were to focus on the legal criteria set out in Human Rights Council resolution 5/1 as it applies to the human rights situation in the four years preceding the review, future cycles will likewise incorporate discussions on State implementation of outcomes from the previous cycle.

Several States have submitted reports on implementation during the first cycle of review, including Argentina,⁶⁵⁵ Azerbaijan,⁶⁵⁶ Bahrain,⁶⁵⁷ Benin,⁶⁵⁸ Chile,⁶⁵⁹ Columbia,⁶⁶⁰ Ecuador,⁶⁶¹ Finland,⁶⁶² the Former Yugoslav Republic of Macedonia,⁶⁶³

⁶⁵⁵ Ministerio de Relaciones Exteriores Comercio Internacional y Culto: De la Nación Argentina, 'Informe de Avance Sobre el Cumplimiento de las Recomendaciones Formuladas a la Argentina en el Marco del Examen Periódico Universal,' 15va Sesión del Consejo de Derechos Humanos, 23 de Septiembre de 2010. Only available in Spanish.

⁶⁵⁶ Permanent Mission of the Republic of Azerbaijan to the United Nations Office and Other International Organizations at Geneva, 'Interim Report of the Government of the Republic of Azerbaijan on the Implementation of the Recommendations by the Working Group of the UN Human Rights Council on the Universal Periodic Review with respect to the First Report of the Republic of Azerbaijan,' 17 January 2012.

⁶⁵⁷ Permanent Mission of the Kingdom of Bahrain to the United Nations Office and Other International Organizations at Geneva, 'Kingdom of Bahrain's UPR Data Base Website,' 29 May 2009, available at: www.upr.bh.

⁶⁵⁸ Mission Permanente du Benin Apres de l'Office des Nations Unies et des Autres Organisations Internationales à Genève, 'Examen Périodique Universel Mise en œuvre des Recommandations Evaluation à Mi-parcours,' 7 March 2012. Only available in Spanish.

⁶⁵⁹ The Permanent Mission of Chile of the United Nations Office and other International Organisations in Geneva, 'Letter to the Office of the U.N. High Commissioner for Human Rights,' 30 June 2009.

⁶⁶⁰ Libertad y Orden, 'Columbia y el Examen Periódico Universal de Derechos Humanos ((EPU) ante el Consejo de Derechos Humanos de las Naciones Unidas,' available at: www.derechoshumanos.gov.co. Only available in Spanish.

⁶⁶¹ 'Avances del Ecuador en el Cumplimiento de sus Compromisos Voluntarios ante el Consejo de Derechos Humanos en el Contexto del Examen Periódico Universal – EPR,' 31 March 2010. Only available in Spanish.

⁶⁶² Ministry for Foreign Affairs of Finland, 'Recommendations Received by Finland during the Consideration of its Human Rights Situation by the Working Group on the Universal Periodic Review in March 2008, and the Actions Undertaken by the Government of Finland in Response to these Recommendations,' 11 June 2010.

⁶⁶³ The Ministry of Foreign Affairs of the Republic of Macedonia, 'Midterm Report of the Republic of Macedonia on Progress in Implementing Recommendations,' May 2009-December 2011.

France,⁶⁶⁴ Japan,⁶⁶⁵ Mauritius,⁶⁶⁶ the Netherlands,⁶⁶⁷ Poland,⁶⁶⁸ Romania,⁶⁶⁹ Slovenia,⁶⁷⁰ Spain,⁶⁷¹ Switzerland,⁶⁷² Ukraine,⁶⁷³ and the United Kingdom.⁶⁷⁴ Whilst only representing a fraction of the States under review during the first cycle (20 of 192 States), the submission of mid-term reports on implementation demonstrates that certain States have taken immediate action towards implementation of accepted recommendations and voluntary commitments. Submission of mid-term reports is an opportunity for States to establish a timeline for implementation with measurable outcomes that it will report on during the following cycle. These reports can also serve as a point of reference for recommending States and relevant stakeholders to follow up on the status of implementation, monitor outcomes, and identify room for improvement.

Participating States reflected on the Universal Periodic Review process and the outcomes yielded following the first cycle of review. Feedback was positive overall, but several States raised concerns regarding the implementation and follow-up phase of the process and made suggestions for improvement. Speaking on behalf of the European Union, Denmark urged States to develop concrete plans for implementation of accepted recommendations and voluntary commitments and submit mid-term reports, and called for States to prevent and punish reprisals against human rights

⁶⁶⁴ France, 'Examen Periodique Universel de la France au Conseil des Driots de L'Homme (2008): Suivi à Mi-Parcours des Recommandations et des Engagements Complémentaires,' 2010. Only available in French.

⁶⁶⁵ The Government of Japan, 'Mid-term Progress Report by Japan on its Implementation of Recommendations made in May 2008,' March 2011.

⁶⁶⁶ Republic of Mauritius, 'Mid-Term Progress Report on the Implementation of the Recommendations Made during the Universal Periodic of Mauritius in February 2009,' February 2011.

⁶⁶⁷ The Netherlands, 'National Interim Report,' April 2010.

⁶⁶⁸ Ministry of Foreign Affairs of the Republic of Poland, 'Universal Periodic Review Mid-Term Progress Report by Poland,' February 2011.

⁶⁶⁹ Government of Romania, 'National Reform Programme Implementation Report,' October 2008.

⁶⁷⁰ Republic of Slovenia, 'Mid-Term Report on the implementation of UPR Recommendations,' March 2012.

⁶⁷¹ Spain, 'Seguimien to de las Recomendaciones Epu Aceptadasoir Espana,' 2011. Only available in Spanish.

⁶⁷² Switzerland, 'Interim Assessment of the Implementation of the UPR Recommendations in Switzerland,' 30 April 2009.

⁶⁷³ The Permanent Mission of Ukraine to the United Nations Office and other International Organisations in Geneva, 'Interim Report of Ukraine on Implementation of the Recommendations Received by Ukraine,' 29 October 2010. Only available in Russian.

⁶⁷⁴ United Kingdom Mission to the Office of the United Nations and Other International Organisations at Geneva, 'Universal Periodic Review Mid-Term Progress Update by the United Kingdom of Great Britain and Northern Ireland on Its Implementation of Recommendations Agreed in June 2008.'

defenders who engage in the Universal Periodic Review process.⁶⁷⁵ Whereas Spain encouraged States to share best practices regarding implementation, Columbia suggested the establishment of a mechanism to follow-up on implementation stemming from the previous cycle of review.⁶⁷⁶ Algeria and Hungary raised concerns that the volume of recommendations rendered implementation unmanageable.⁶⁷⁷ Costa Rica and Portugal underscored the important role of civil society in the follow-up stage. Costa Rica also suggested that the all recommendations made during the previous cycle be reviewed in the following cycle.⁶⁷⁸

UPR Info is also responsible for developing the Implementation Recommendation Index, which measures the level of implementation for each accepted recommendation since the previous cycle of review. The index assigns each recommendation a level of implementation, including ‘not implemented,’⁶⁷⁹ partially implemented⁶⁸⁰ or fully implemented⁶⁸¹ based on the index criteria.’⁶⁸²

According to statistics compiled using this Index as per UPR Info’s annual report, ‘Among the 1597 recommendations commented upon [by stakeholders], UPR Info [reports] that 55% were not implemented, 28% were partially implemented, and 12% were fully implemented.’⁶⁸³ In a subsequent report, UPR Info analysed the implementation status of 3,294 recommendations. Of these, 12.16% (391 recommendations) have been fully implemented, 28% (859 recommendations) have been partially implemented, and 57% (1884 recommendations) have not been

⁶⁷⁵ UPR Info, ‘HRC Holds General Debate on UPR,’ 29 March 2012, available at: <http://www.upr-info.org/+HRC-holds-usual-general-debate-on,934+.html>.

⁶⁷⁶ *Ibid.*

⁶⁷⁷ International Service for Human Rights, ‘Council Debate on UPR: Raising the Bar for the Second Cycle,’ 2 April 2012, available at: <http://www.ishr.ch/upr-news/1282-council-holds-debate-on-upr-states-call-for-follow-up-to-recommendations>.

⁶⁷⁸ *Ibid.*

⁶⁷⁹ UPR Info, ‘On the Road to Implementation,’ Geneva, October 2012, available at: http://www.upr-info.org/IMG/pdf/2012_on_the_road_to_implementation.pdf, p. 9. The report identifies recommendations as ‘not implemented’ when ‘no action has been taken so far.’

⁶⁸⁰ *Ibid.*, ‘Partially implemented’ refers to recommendations where ‘the State has taken some action [towards improving] the human rights situation.’

⁶⁸¹ *Ibid.*, ‘Fully implemented’ reflects full compliance with a recommendations.’

⁶⁸² UPR Info, ‘Annual Report 2011,’ Geneva, p. 20, available at: [www.upr-info.org](http://www.upr-info.org/+UPR-Info-s-Annual-Report-2011+.html), available at: <http://www.upr-info.org/+UPR-Info-s-Annual-Report-2011+.html>, p. 8.

⁶⁸³ *Ibid.*, p. 13. One per cent of the recommendations commented upon were too vague to evaluate the level of implementation.

implemented. Four and a half per cent or 160 recommendations ‘have not been useful in assessing the implementation status of the recommendation.’⁶⁸⁴

As the legitimacy of Universal Periodic Review rests on implementation of the outcome of the review, the method employed for assessing such implementation must be accurate and updated regularly. The Human Rights Council must likewise take appropriate action when States fail to implement accepted recommendations and voluntary commitments within a reasonable period.

As Universal Periodic Review is in its early stages, the second cycle of review presents the first opportunity to measure in full the scope of State implementation of accepted recommendations and voluntary commitments stemming from the previous cycle. The thirteenth session (or the first session of the second cycle) of Universal Periodic Review took place from 21 May 2012 to 4 June 2012 at the Palais des Nations in Geneva.⁶⁸⁵ At the time of writing, the conclusion of the thirteenth session presents the first opportunity to measure in full State progress during the implementation phase of Universal Periodic Review by weighing accepted recommendations and voluntary commitments from the first session against evidence of implementation during the thirteenth session in the second cycle.

As Human Rights Council resolution 16/21 stipulates that ‘the second and subsequent cycles of the review should focus on, *inter alia*, the implementation of the accepted recommendations,’⁶⁸⁶ the interactive dialogue should also be based on follow-up on the implementation of recommendations accepted during the first session in 2008. In practice, however, recommending States seldom referred to recommendations from the first cycle. Implementation of accepted recommendations and voluntary commitments stemming from the first cycle of review is examined below based on a random sample of one State per regional group during the thirteenth session of the second cycle of review, including Bahrain, Brazil, the Netherlands, Poland, and South Africa. In each of these cases, accepted recommendations and voluntary commitments

⁶⁸⁴ UPR Info, ‘On the Road to Implementation,’ Geneva, October 2012, available at: http://www.upr-info.org/IMG/pdf/2012_on_the_road_to_implementation.pdf, p. 9.

⁶⁸⁵ The following States were reviewed during session thirteen of Universal Periodic Review: Algeria, Bahrain, Brazil, Ecuador, Finland, India, Indonesia, Morocco, the Netherlands, the Philippines, Poland, South Africa, Tunisia and the United Kingdom.

⁶⁸⁶ Human Rights Council, ‘Review of the Work and Functioning of the Human Rights Council,’ 12 April 2011, A/HRC/16/21, Annex, para. 6.

made in the Working Group reports is compared against State action to implement these commitments since their first reviews, thus identifying gaps and inconsistencies between commitments and implementation. State follow-up on outstanding commitments during the second cycle of review is also examined to determine whether, in practice, discussions during the first and second cycles are entirely separate, or whether States draw a necessary connection between the two, as reflected in their recommendations.

2.1 Bahrain

Bahrain was the first State under review during the second cycle. Since accepting all of the recommendations it had received, Bahrain has taken action towards their implementation, but a number remain outstanding. During its first review, Bahrain accepted a recommendation from Slovenia to initiate ‘a public campaign with the view to removing reservations to [the Convention on the Elimination of All Forms of Discrimination against Women] CEDAW, ratifying the Optional Protocol and harmonizing national legislation.’⁶⁸⁷ Bahrain also accepted recommendations on conducting consultations to adopt a family law,⁶⁸⁸ considering signing the Convention on the Protection of Persons from Enforced Disappearance, considering citizenship for children whose father is not Bahraini,⁶⁸⁹ adopting legislation on female domestic workers,⁶⁹⁰ and implementing safeguards to ensure the new draft press law does not unduly infringe on freedom of expression.⁶⁹¹ Not only did Bahrain receive comparatively few recommendations during its review, the quality of these recommendations is quite poor. Bahrain was able to follow through with the majority of its recommendations by conducting a public campaign and considering taking further action without actually following through with the intended result of such campaigning and consideration.

Discriminatory laws and policies towards Bahraini women remain in place, as reservations to the Convention on the Elimination of Discrimination against Women have not been lifted. This recommendation put forward during Universal Periodic

⁶⁸⁷ Human Rights Council, ‘Report of the Working Group on the Universal Periodic Review: Bahrain,’ 22 May 2008, A/HRC/8/19, p. 13, para. 60.2.

⁶⁸⁸ *Ibid*, para.60.3 (Switzerland).

⁶⁸⁹ *Ibid*, para.60.5 (the Russian Federation).

⁶⁹⁰ *Ibid*, para.60.6 (the Netherlands).

⁶⁹¹ *Ibid*, para.60.7 (Sweden).

Review reiterates a recommendation advanced by the Committee on the Elimination of Discrimination against Women,⁶⁹² which Bahrain also ignored.

Bahrain has yet to ratify the Optional Protocol or sign/ratify the International Convention for the Protection of Persons from Enforced Disappearance. Children who have a Bahraini mother and a father of another nationality are still unable to obtain citizenship. Bahrain has taken positive steps towards drafting a family law, protecting women's rights for Sunni Muslims, but excludes the Shi'a Muslim population. Other draft laws on the rights of children remain outstanding, although Bahrain did adopt legislation conforming to the definition of a child under the Convention on the Rights of the Child, raising the legal age of adulthood as recognised by the State from 16 to 18. Whilst Bahrain established a national human rights institution in 2009, the institution 'appears to have had limited impact on protecting and promoting human rights in Bahrain.'⁶⁹³

Given the protests that took place in Bahrain in the year preceding its review during the second cycle, the majority of the 67 States that took the floor during the interactive dialogue focused on recent human rights violations, whilst few followed-up on the implementation of recommendations stemming from the first cycle. Despite Bahrain's commitment to ensure the new draft press law does not infringe the freedom of expression, Bahrain requires official notification for all public gatherings, including private meetings among citizens. According to Amnesty International 'political rallies and meetings for non-citizens are prohibited, and demonstrations for election purposes are banned. In 2011, hundreds of people were arrested, detained and prosecuted for participating in anti-government protests.' These measures are a blatant violation of freedom of expression further exasperated by the Government declaring of a state of emergency on March 2011 following the outburst of anti-government protests. The Bahrain Independent Commission of Inquiry was established to investigate allegations of excessive force and torture stemming from the protests. The Commission recommended that Bahrain hold those responsible for human rights violations

⁶⁹² Committee on the Elimination of Discrimination against Women, 'Concluding Observations of the Committee on the Elimination of Discrimination against Women,' CEDAW/C/BHR/CO/2, 14 November 2008, p. 3, para. 17.

⁶⁹³ Amnesty International, 'Bahrain: Protecting Human Rights after the Protests,' Amnesty International Submission to the UN Universal Periodic Review, May-June 2012, p. 5.

accountable and ensure its legislation conforms with international human rights standards.⁶⁹⁴

2.2 Brazil

Like Bahrain, Brazil likewise accepted all of the recommendations it had received during its first review. Of the fifteen recommendations received and accepted, three refer to continuing action and one on preserving action, thus not requiring any further implementation.⁶⁹⁵ The Republic of Korea's recommendation to consider 'human rights violations of indigenous people, lack of public security and poor detention conditions'⁶⁹⁶ requires minimal action to implement, as consideration in itself is immeasurable and does not yield concrete results. Instead of recommending that Brazil adopt a law on access to information, Peru recommended that Brazil 'do its utmost' to adopt such a law.⁶⁹⁷ In essence, Brazil could meet its commitment by taking steps towards such adoption without following through. Similarly, Belgium recommended that Brazil 'intensify efforts for the security of human rights defenders and reinforce cooperation with all stakeholders, in particular, the states and the military police.'⁶⁹⁸ Weak language is also found in Mexico's recommendations to 'encourage the establishment of a national institution complaint with Paris Principles'⁶⁹⁹ and 'enhance access to justice as well as to improve the judicial system.'⁷⁰⁰ Other examples of vague language are investing 'more rigour',⁷⁰¹ taking 'action to improve',⁷⁰² 'pursuit of',⁷⁰³ and making 'greater efforts'.⁷⁰⁴ The level of action required to implement these recommendations is unclear. Brazil could simply make a greater effort to undertake any measure of 'encouragement,' 'enhancement,' 'effort' or similar 'improvement' towards these ends without following through with the intended purpose of the recommendation. Only two of the fifteen recommendations were specific and concrete; they centred on implementation 'at the earliest possible moment' measures

⁶⁹⁴ *Ibid.*

⁶⁹⁵ Human Rights Council, 'Report of the Working Group on the Universal Periodic Review: Brazil,' 22 May 2008, A/HRC/8/27, paras. 83.1 (Belgium), 83.2 (Ghana), 83.11 (Ghana), p. 15, para. 83.13 (Algeria).

⁶⁹⁶ *Ibid.*, para. 83.5.

⁶⁹⁷ *Ibid.*, para. 83.10.

⁶⁹⁸ *Ibid.*, para. 83.4.

⁶⁹⁹ *Ibid.*, p. 16, para.83.14.

⁷⁰⁰ *Ibid.*, p. 15, para.83.8.

⁷⁰¹ *Ibid.*, para.83.3 (United Kingdom).

⁷⁰² *Ibid.*, para.83.6 (Germany).

⁷⁰³ *Ibid.*, para.83.12 (Nigeria).

⁷⁰⁴ *Ibid.*, para.83.7 (Uruguay).

to address human rights abuses;⁷⁰⁵ and the integration of ‘gender perspectives in the follow-up process to the UPR review.’⁷⁰⁶

During its second cycle of review, little attention was paid to Brazil’s fulfilment of its accepted recommendations and voluntary commitments stemming from the first cycle of review. Brazil has taken some steps towards implementing the recommendations and voluntary commitments arising from the first cycle of review, but much progress remains outstanding.

Whilst Brazil has made significant progress towards combating poverty since its first review, Amnesty International reports that:

16.2 million Brazilians continue to live in extreme poverty with 4.8 million receiving no income. Over sixty per cent of those living in extreme poverty are black or of mixed-race. This sector of the population persistently suffers the most severe human rights violations, including denial of access to basic services, police violence, lack of protection from criminals and forced evictions.⁷⁰⁷

Brazil has also taken steps towards ensuring the protection of human rights defenders, including through the establishment of a National Program for the Protection of Human Rights Defenders. However, supporting legislation has yet to be adopted and tangible improvements at the ground level have yet to be realised as human rights defenders continue facing serious threats to their security and some have been victims to vicious acts of violence. Activists ‘José Cláudio Ribeiro da Silva and his wife, Maria do Espírito Santo, were shot dead by gunmen in the municipality of Ipixuna, in the southeast of Pará state’⁷⁰⁸ in 2011. Eight similar deaths in the same region and year remain unsolved. Other States that have instituted programmes similar to Brazil’s national programme have similarly fallen short of providing full protection for human rights defenders.⁷⁰⁹

Brazil has yet to implement several other recommendations, including the establishment of a national human rights institution that conforms to the Paris

⁷⁰⁵ *Ibid*, para.83.9 (The Netherlands).

⁷⁰⁶ *Ibid*, p. 16, para.83.15 (Slovenia).

⁷⁰⁷ Amnesty International, ‘Brazil: Time to Deliver: A Human Rights Review,’ Amnesty International Submission to the UN Universal Periodic Review, May-June 2012, p. 3.

⁷⁰⁸ *Ibid*, p. 4.

⁷⁰⁹ *Ibid*.

Principles, which has been pending for approval by Congress for nearly a decade. Once established, it is unclear whether, in its proposed form, the Institution will function entirely independently from government.⁷¹⁰

After committing to eliminating hearing delays for detainees in pre-trial detention during its first review, ‘investigation and prosecution of human rights crime to federal jurisdiction remains slow and cumbersome,’⁷¹¹ particularly for those who are economically disadvantaged.⁷¹² According to Amnesty International, ‘Thousands of detainees, very often poor afro-descendants, spend months or even years in pre-trial detention awaiting court hearings, or remain detained following the completion of their sentence.’⁷¹³

As for its promise to address overcrowding and corruption in prisons, prisons in Bahrain are characterised by ‘extreme overcrowding, corruption and inadequate structures, resulting in detainees being held in cruel, inhuman, and degrading conditions.’⁷¹⁴ Eighteen prison murders took place in October 2010 alone caused by overcrowding. A further six prisoners were killed in February 2011. There have been reports of shared cells for men, women, and children, leading to incidents of ‘violence and sexual abuse.’⁷¹⁵

Whilst Brazil it is a positive indication that Brazil accepted all of the recommendations it has received and has made progress in a number of areas relating to the realisation of its voluntary commitments and accepted recommendations, it is clear that much action has yet to be taken in order to fulfil these commitments in their entirety. Recommending States must be more vigilant in following up on the fulfilment of recommendations made during the previous cycle to ensure States such as Brazil follow-through with their commitments.

2.3 The Netherlands

Among the 31 recommendations made during its review, the Netherlands accepted recommendations on refraining from using force when ‘forcibly repatriating migrants,

⁷¹⁰ *Ibid.*

⁷¹¹ *Ibid.*

⁷¹² *Ibid.*

⁷¹³ *Ibid.*

⁷¹⁴ *Ibid.*

⁷¹⁵ *Ibid.*

refugees and asylum seekers⁷¹⁶ preventing discrimination against migrant workers,⁷¹⁷ and providing education on human rights generally,⁷¹⁸ diversity and multiculturalism,⁷¹⁹ and tolerance.⁷²⁰ Despite the Netherlands' commitment to eliminate the use of excessive force when repatriating migrants, Amnesty International has received several complaints from individuals who claim to have been mistreated when expelled from the Netherlands. Given that information stemming from investigations conducted by the Commission for Comprehensive Supervision of Return is not available to the public, the failure to comply with eliminating the use of force is marred by a lack of transparency during the investigation process. The Netherlands has also amended the Aliens Act to ensure claims for asylum are processed between 8 and 14 days, which may not provide sufficient time for asylum seekers to verify their claims for asylum, particularly in complex cases. Adequate time must be provided to individuals claiming asylum in order to ensure their due process rights are respected to reduce the risk of refoulement or forcible return.

The Netherlands has imposed 'criminal sanctions solely in connection with irregular migration,'⁷²¹ which have been criticised by the Special Rapporteur on the human rights of migrant workers and the Office of the High Commissioner for Human Rights. In April 2011, the European Court of Human Rights ruled that the members of the European Union cannot employ coercive measures to forcibly remove or administer a custodial sentence merely based on illegal immigration⁷²² Migrants should not be subject to a disproportionate risk of having their human rights violated.

Although the Netherlands has accepted recommendations on preventing discrimination, its strategy remains unclear, as the Netherlands has yet to develop and implement a 'comprehensive plan to combat discrimination.' The Netherlands has reaffirmed its commitment towards combating discrimination, but part of its strategy rests on imposing a 'civic duty' to eliminate prejudice and discrimination. In order to

⁷¹⁶ Human Rights Council, 'Report of the Working Group on the Universal Periodic Review: The Netherlands,' 13 May 2008, A/HRC/8/31, para. 78.6 (Nigeria) and para. 78.24 (Mexico).

⁷¹⁷ *Ibid*, para.78.7 (Algeria), para.78.8 (Canada, Cuba), para. 78.18 (Indonesia).

⁷¹⁸ *Ibid*, para.78.19 (Ghana).

⁷¹⁹ *Ibid*, para.78.20 (Algeria, Republic of Korea).

⁷²⁰ *Ibid*, para.78.31 (Saudi Arabia).

⁷²¹ Amnesty International, 'Netherlands,' Amnesty International Submission to the UN Universal Periodic Review 13th Session of the UPR Working Group, May-June 2012, p. 5.

⁷²² *El Dridi*, C-61/11, European Union: Court of Justice of the European Union, 28 April 2011, available at: <http://www.refworld.org/docid/4dde46cb2.html>

fulfil its obligations under international human rights law, the Netherlands must amend the General Equal Treatment Act to conform with these standards and assume a more active role in addressing the causes of discrimination, recording individual complaints of discrimination, and promoting ‘tolerance and understanding.’⁷²³ Draft legislation to ban clothing which conceals the face in public places and impose a fine ‘would have a disproportionate effect on one particular group of the population: girls and women who choose to wear a burqa or niqab,’⁷²⁴ which would perpetuate discriminatory practices reflected in law.

In terms of meeting its commitment to provide human rights education on human rights, diversity, multiculturalism, and tolerance, the Netherlands lacks adequate human rights education for Dutch pupils. Despite calls from the Committee on the Rights of the Child to ensure that the study of human rights is integrated into ‘school curricula at all levels,’⁷²⁵ schools are given discretion over whether to provide human rights education.

2.4 Poland

During the first session of Universal Periodic Review, Poland provided a general response to each of the twenty-nine recommendations it had received,⁷²⁶ which means that Poland failed to take a concrete stance on its intention to address any of the issues raised.⁷²⁷ Although the delegation did not overtly commit to implementing the

⁷²³ Amnesty International, ‘Netherlands,’ Amnesty International Submission to the UN Universal Periodic Review 13th Session of the UPR Working Group, May-June 2012, p. 4.

⁷²⁴ *Ibid.*

⁷²⁵ Committee on the Rights of the Child, ‘The Aims of Education: Article 29(1), 17 April 2001, CRC/GC/2001/1, para. 62; Committee on the Rights of the Child, ‘Consideration of Reports Submitted by States Parties under Article 44 of the Convention,’ 23 July 2008, CRC/C/NLD, paras. 17-18.

⁷²⁶ Human Rights Council, ‘Report of the Working Group on the Universal Periodic Review: Poland,’ 23 May 2008, A/HRC/8/30, pp. 16-17, paras. 54.1-54.29.

⁷²⁷ *Ibid.*, pp. 16-17. These recommendations called for Poland to, *inter alia*, adopt legislation to ensure domestic legislation is congruent with the *Convention on the Rights of the Child* (Angola), para. 54.1 and (Mexico) para. 54.3; ii) protect equal treatment and prohibit discrimination on all grounds (Slovenia), para. 54.3; (Slovenia, United Kingdom and Sweden) para. 54.6; and, sanction intolerance and hate speech (Slovenia), para. 54.2; protect children against physical and psychological violence (Sweden) para. 54.2; ratify the *International Convention for the Protection of All Persons from Enforced Disappearance* (France) para. 54.4; improve prison conditions (see Amnesty International, ‘Poland: Involvement in US-led Rendition and Secret Detention Programmes and Women’s Access to Sexual and Reproductive Rights,’ Amnesty International Submission to the UN Universal Periodic Review, May-June 2012. See also Republic of Korea) para. 54.7 (Republic of Korea); para. 54.8 (Denmark) and para. 54.10 (Algeria); implement a ‘national programme to combat overcrowding in prisons;’ para. 54.9 (Russian Federation); and publish information regarding the secret detention of suspected terrorists on Polish territory, para. 54.20.

recommendations it had received, and thus is not expressly bound to take steps towards their implementation prior to the second cycle, Poland made several voluntary commitments, which it is required to take action on and will be held accountable for during future cycles.

During the first cycle of review, Poland made the following voluntary commitments:

- a. offer pre-school education programmes and develop a strategy to improve education in rural areas;⁷²⁸
- b. implement the recommendations of the Human Rights Committee;⁷²⁹
- c. adopt legislation to counter ‘discrimination and ensuring equal treatment of all persons, irrespective of their sex, religion beliefs, ethnic origin, nationality, race, age, disability or sexual orientation and other reasons’;⁷³⁰
- d. strengthen efforts to combat social exclusion and poverty;⁷³¹
- e. conduct a review regarding the rehabilitation of persons with a disability and rehabilitation services available to them;⁷³²
- f. counter ‘terrorism, xenophobia, anti-Semitism and hate crimes’;⁷³³
- g. participate in the World Programme for Human Rights Education and integrate human rights education into school curricula;⁷³⁴
- h. ratify the Second Optional Protocol on the International Covenant on Civil and Political Rights;⁷³⁵
- i. implement a nation-wide programme to promote gender equality in the labour market, political arena, and health care services;⁷³⁶ and,
- j. ‘strengthen measures to reduce domestic violence,’ including the prohibition of corporal punishment and implementation of the National Programme to Counter Domestic Violence.⁷³⁷

⁷²⁸ UPR Info, ‘Database of Universal Periodic Review Recommendations,’ 2012, available at: www.upr-info.org/database/

⁷²⁹ *Ibid.*

⁷³⁰ Human Rights Council, ‘Report of the Working Group on the Universal Periodic Review: Poland,’ 23 May 2008, A/HRC/8/30, p. 4, para. 7; p. 17, para. 54.6 (Slovenia, United Kingdom and Sweden); p. 11, para. 33.

⁷³¹ *Ibid.*, p. 11, para. 35.

⁷³² Human Rights Council, ‘Report of the Working Group on the Universal Periodic Review: Poland,’ 23 May 2008, A/HRC/8/30, p. 4, para. 7.

⁷³³ *Ibid.* UPR Info, ‘Database of Universal Periodic Review Recommendations,’ 2012, available at: www.upr-info.org/database/

⁷³⁴ *Ibid.*

⁷³⁵ *Ibid.*

⁷³⁶ Human Rights Council, ‘Report of the Working Group on the Universal Periodic Review: Poland,’ 23 May 2008, A/HRC/8/30, p. 4, para. 7.

⁷³⁷ *Ibid.*, p. 11, para. 34.

Since the first cycle of review, the Government of Poland has achieved some progress in following through with the voluntary commitments and the recommendations it had received. One example is Poland's introduction of new legislation to combat discrimination in December 2010, which tasks the Ombudsperson with producing independent studies, providing support to individuals pursuing complaints of 'direct and indirect discrimination and differential treatment,' and making recommendations.⁷³⁸ Despite these additional obligations imposed by new legislation, the Ombudsperson has not been provided with sufficient resources to carry out these new functions, let alone produce a significant reduction in 'discrimination and differential treatment.'⁷³⁹ Since the delegation of Poland committed towards combating discrimination during the first cycle of review, the Office of the Ombudsperson has reported an increase in discrimination based on an increased number of complaints alleging violence and verbal attacks against individuals of Roma, Muslim or African descent.

Poland is also launching a National Action Plan for Equal Treatment to prevent discrimination and promote equal treatment, irrespective of sex, sexual orientation, religious beliefs, ethnic origin, nationality, race, age or disability. Civil servants are to receive corresponding training. In order to espouse equal treatment through its own practices, the Government of Poland has adopted a quota requiring that women represent a minimum of 35% of political posts. Poland now also permits disabled individuals to vote in elections by proxies or via post; ballot cards are available in Braille, allowing blind individuals full participation in the electoral process.

Poland has taken steps towards combating domestic violence and has introduced the Prevention and Counteracting Domestic Violence Act, prohibiting corporal punishment. Poland has also launched a campaign to counter domestic violence.

According to findings of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, prison conditions in Poland are

⁷³⁸ Amnesty International, 'Poland: Involvement in US-led Rendition and Secret Detention Programmes and Women's Access to Sexual and Reproductive Rights,' Amnesty International Submission to the UN Universal Periodic Review, May-June 2012, p. 3; Journal of Laws of 2010, No 245, item 1700 (*Ustawa z Dnia 3 Grudnia 2010 Roku o Wdrożeniu Niektórych Przepisów Unii Europejskiej w Zakresie Równego Traktowania*).

⁷³⁹ *Ibid.*

characterised by poor healthcare, overcrowding, and ill-treatment of detainees.⁷⁴⁰ Since the first cycle of review, there has been a 5% decrease in the number of individuals who are imprisoned in Poland, which may slightly improve overall conditions, but additional steps must be taken to address poor healthcare and ill-treatment of detainees.

Evidence has emerged suggesting Poland was involved in the secret detention and rendition programme led by the Central Intelligence Agency. Extraordinary rendition⁷⁴¹ occurs when the rendering State extra-judicially arrests individuals in a foreign country for having planned, abetted, or committed terrorist acts, or may have relevant information; forcibly transfers them to a third country without assurance from that country not to torture; arbitrarily detains suspects without access to legal counsel, full disclosure, or hearing before an independent judiciary; refuses to disclose the suspects' whereabouts; and employs unduly harsh and inhuman interrogation methods during their indefinite detention.⁷⁴² Several planes with rendered individuals on-board have passed through Poland or landed near secret detention site Stare Kiejkuty. Although the Government of Poland has launched an investigation led by the Appeal Prosecutor's Office into Poland's involvement in rendition and secret detention programmes, the results have yet to be made public and the victims' families remain without answers.⁷⁴³ The Government of Poland has not acknowledged or taken responsibility for its alleged involvement in rendition and secret detention.

Whilst Poland has taken a number of positive steps towards implementing recommendations and voluntary commitments, much progress has yet to be made. Recommending States assume an integral role in tracking the implementation of

⁷⁴⁰ 'Report to the Polish Government on the visit to Poland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 26 November to 8 December 2009,' Section II (C)(4), 12 July 2011, CPT/Inf (2011) 20, available at <http://www.cpt.coe.int/documents/pol/2011-20-inf-eng.htm>

⁷⁴¹ According to Amnesty International, extraordinary rendition is 'the practice of transferring a detainee from US custody to the custody of a foreign state.' The reverse (i.e. a foreign State transferring a detainee to US custody) is sometimes referred to a reverse rendition. For the purposes of this thesis, both practices (i.e. rendition and extraordinary rendition) will be used interchangeably to refer to the arrest of an individual in a foreign State and his or her transfer to another State for detention and interrogation unless otherwise stated within the context of this thesis.

⁷⁴² Laura Barnett, 'Extraordinary Rendition: International Law and the Prohibition of Torture,' Library of Parliament, available at <http://www2.parl.gc.ca/Content/LOP/ResearchPublications/prb0748-e.htm>. Last accessed 29 December 2009; Elena Landriscina, 'The Legal Obligation to Prosecute 'Rendition to Torture,' (2009) 6 *Essex Human Rights Review*, 126.

⁷⁴³ A/HRC/8/30, paragraph 54.20 (Russian Federation).

accepted recommendations and follow-up during the following cycle of review; however, in Poland's case, it is difficult to determine the position taken by the delegation of Poland on a number of issues due to their general response to all recommendations received during the first cycle of review. In future cycles, States should clearly indicate their intention to accept or reject recommendations, so that their progress towards improving human rights at the ground level can be accurately measured.

2.5 South Africa

During its review in the first session of the first cycle, South Africa received twenty-two recommendations.⁷⁴⁴ By failing to provide a response to any of the above recommendations, South Africa espouses a lack of commitment towards participating in the review process. Since it has not formally accepted any of the recommendations it had received during the first cycle, South Africa is in theory not obligated to demonstrate that it has implemented them prior to the second cycle. However, when presenting its national report during its review in the thirteenth session in the second cycle, the President of South Africa indicated that the majority of recommendations it received during the first session first cycle had been implemented.

The Deputy Minister underscored South Africa's work in meeting its national priorities of 'education, health, decent work and sustainable livelihoods, rural

⁷⁴⁴ 'Criminalizing corporal punishment' (see Human Rights Council, 'Report of the Working Group on the Universal Periodic Review: South Africa,' 23 May 2008, A/HRC/8/32, p. 20, para. 67.1 (Slovenia); Amending domestic legislation to conform with Article 1 of the *Convention against Torture*, para. 67.2 (Slovenia); integrating a 'gender perspective' into UPR activities, including follow-up, para. 67.3 (Slovenia); addressing 'gender based violence,' para. 67.4 (The Netherlands); preventing and punishing violence against women and children, para. 67.6 (Canada); ratifying the *International Covenant on Economic, Social and Cultural Rights*, the *Optional Protocol to the Convention against Torture*, para. 67.7 (United Kingdom), and the *International Convention on the Protection of All Persons from Enforced Disappearance*, para. 67.8 (France); following through with recommendations from the Committee on the Elimination of Racial Discrimination, para. 67.9 (Canada); recognising the status of refugees, para. 67.10 (Mexico); providing medical care and treatment to victims of sexual assault, para. 67.11 (Canada); access to treatment for HIV/AIDS, eliminating discrimination against AIDS patients, and preventing the spread of HIV/AIDS, para. 67.12-14 (Canada, Romania and Algeria); facilitating school attendance, particularly among youth from economically disadvantaged families, para. 67.15 (Angola); and including human rights education in school curricula (para. 67.16 (Tunisia)); working towards eliminating poverty and social inequality (para. 67.17 (Mauritania)); sharing best practices in the field of economic, social and cultural rights with other developing countries (para. 67.18 (Sudan)); promoting equality, combating discrimination based on sexual orientation (para. 67.20 (United Kingdom)) and providing remedies for victims of such discrimination (para. 67.21 (Belgium)); and sharing best practices on 'promoting tolerance and coexistence among ethnic and religious minorities (para. 67.19 (Jordan); and providing education to prevent discrimination (para. 67.22 (Belgium)).

development and food security, and clamping down on crime and corruption.⁷⁴⁵ Among its major achievements since the previous review is ‘the enrolment of 98 per cent of children in education, and the construction of 2.8 million houses since 1995 - representing one of the world’s largest housing projects.’⁷⁴⁶ South Africa has made progress in implementing the recommendations that it had received during its previous review, but several gaps remain a concern.

In 2005 one in three babies was born with HIV/AIDS, which had been transmitted to them by their mothers. In 2010 the number of children born with the disease had been reduced to 3.5 per cent, due to the proliferation of treatments by the Government.⁷⁴⁷ Whilst South Africa has also provided 1.4 million people with access to medical treatment for HIV/AIDS patients, economically disadvantaged individuals and those who live in rural areas continue to experience difficulties in accessing services.

Amnesty International reports that remedies, protection and access to justice for women are limited by ‘lack of capacity and political will and poor training programs for police and other service-providers.’⁷⁴⁸ Despite anti-discrimination legislation protecting lesbian, gay, bisexual and transgender (LGBT) groups, as well as the establishment of an Inter-Ministerial Committee and National Intervention Strategy, violent attacks against LGBT groups persist. Since the previous cycle of review, two lesbian activists were murdered and there have been a number of cases involving the rape of individuals belonging to the LGBT community. A publicity campaign promoting public awareness is being launched.

South Africa has failed to ‘prevent, prosecute and punish acts of torture’⁷⁴⁹ and has not ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. South Africa has also failed to deliver on its commitment stemming from the first cycle of review to ratify the

⁷⁴⁵ International Service for Human Rights, ‘UPR of South Africa: Questioned on Sexual Orientation and Gender Identity Based Violence,’ June 2012, available at: <http://www.ishr.ch/upr-news>

⁷⁴⁶ Amnesty International, ‘South Africa: Key Human Rights Concerns in South Africa,’ Amnesty International Submission to the UN Universal Periodic Review, May-June 2012, p. 3.

⁷⁴⁷ *Ibid.*

⁷⁴⁸ *Ibid.*

⁷⁴⁹ *Ibid.*

International Covenant on Economic, Social and Cultural Rights and its Optional Protocol prior to the second cycle.⁷⁵⁰

Most States that made recommendations to South Africa during the first cycle of review did not follow-up with implementation of those recommendations, which may be due to South Africa providing ‘no response.’ A number of recommendations made during the first cycle were repeated during the second cycle including, *inter alia*:

- a. A recommendation made by Slovenia during the first session regarding the criminalisation of corporal punishment⁷⁵¹ was repeated by Mexico during South Africa’s second review.⁷⁵²
- b. Slovenia likewise recommended that South Africa ‘enact a legislation which would, in line with article 1 of the Convention against Torture, prevent and eliminate torture and combat impunity’ during the first cycle.⁷⁵³ During the second cycle, Cape Verde,⁷⁵⁴ France⁷⁵⁵ and Costa Rica⁷⁵⁶ made similar recommendations. The Czech Republic made a recommendation that was nearly identical to the recommendation made by Slovenia in the first cycle.⁷⁵⁷
- c. During the first cycle, the Netherlands recommended that South Africa ‘take increased measures to protect and provide redress to women at risk of or subject to gender-based violence.’⁷⁵⁸ Several States during the second cycle echoed the Netherlands’s plea, including France,⁷⁵⁹ Malaysia,⁷⁶⁰ Austria,⁷⁶¹

⁷⁵⁰ *Ibid.*

⁷⁵¹ Human Rights Council, ‘Universal Periodic Review: Report of the Working Group on the Universal Periodic Review: South Africa,’ 23 May 2008, A/HRC/9/32, para. 67.1.

⁷⁵² Human Rights Council, ‘Report of the Working Group on the Universal Periodic Review: South Africa,’ 9 July 2012, A/HRC/21/16.

⁷⁵³ Human Rights Council, ‘Universal Periodic Review: Report of the Working Group on the Universal Periodic Review: South Africa,’ 23 May 2008, A/HRC/9/32, para. 67.2.

⁷⁵⁴ Human Rights Council, ‘Report of the Working Group on the Universal Periodic Review: South Africa,’ 9 July 2012, A/HRC/21/16, para. 124.20. Cape Verde called on South Africa to calling for South Africa to ‘pay special attention...to change of [sic] negative social practices particularly with respect to; [sic] torture and ill treatment in detention...’

⁷⁵⁵ *Ibid.*, para. 124.56. France recommended that South Africa ‘Adopt as soon as possible legislation criminalising acts of torture...’

⁷⁵⁶ *Ibid.*, para. 124.57. Costa Rica encouraged South Africa to ‘Take the necessary legislative measures to prevent, prosecute and punish acts of torture...’

⁷⁵⁷ *Ibid.*, para. 124.55. The Czech Republic called for South Africa to ‘Enact legislation which would, in line with Article 1 of the Convention against Torture (CAT), prevent and eliminate torture, and ratify OP-CAT at the earliest opportunity.’

⁷⁵⁸ Human Rights Council, ‘Universal Periodic Review: Report of the Working Group on the Universal Periodic Review: South Africa,’ 23 May 2008, A/HRC/9/32, para. 67.3.

⁷⁵⁹ Human Rights Council, ‘Report of the Working Group on the Universal Periodic Review: South Africa,’ 9 July 2012, A/HRC/21/16, para. 124.51.

⁷⁶⁰ *Ibid.*, para. 124.59.

⁷⁶¹ *Ibid.*, para. 124.62.

Czech Republic,⁷⁶² Norway,⁷⁶³ Nicaragua,⁷⁶⁴ and Spain;⁷⁶⁵ no States during the second cycle made the same recommendation as Slovenia during the first cycle.

- d. Romania, Germany, Zimbabwe and Brazil called for South Africa to ratify the International Covenant on Economic, Social and Cultural Rights during the first session of review.⁷⁶⁶ This recommendation resurfaced during the second session when posed by the United Kingdom,⁷⁶⁷ Hungary,⁷⁶⁸ Brazil,⁷⁶⁹ Chad,⁷⁷⁰ Palestine,⁷⁷¹ Slovenia,⁷⁷² Portugal,⁷⁷³ France⁷⁷⁴ and Spain.⁷⁷⁵

The repetition of recommendations made during the first cycle in the second cycle demonstrates that recommending States follow-up on recommendations that the State concerned has rejected during the previous cycle. However, the high number of similar recommendations in a single review suggests that State recommendations overlap and thus waste time on repetition during the interactive dialogue that could have been invested into identifying more concrete, action-oriented recommendations for improvement.

The scope of obligations that a State must adhere to and answer for during the review process crystallises over time, as States accept recommendations, make voluntary commitments and sign and/or ratify additional international human rights treaties. However, when States fail to take clear positions on recommendations, their scope of accountability is limited to its adherence to the Charter of the United Nations, the Universal Declaration of Human Rights, any international human rights instruments

⁷⁶² *Ibid*, para. 124.63.

⁷⁶³ *Ibid*, paras. 124.64, 124.68.

⁷⁶⁴ *Ibid*, para. 124.65.

⁷⁶⁵ *Ibid*, para. 124.74.

⁷⁶⁶ Human Rights Council, 'Universal Periodic Review: Report of the Working Group on the Universal Periodic Review: South Africa,' 23 May 2008, A/HRC/9/32, para. 67.7.

⁷⁶⁷ Human Rights Council, 'Report of the Working Group on the Universal Periodic Review: South Africa,' 9 July 2012, A/HRC/21/16, para. 124.2.

⁷⁶⁸ *Ibid*, para. 124.3.

⁷⁶⁹ *Ibid*, para. 124.4.

⁷⁷⁰ *Ibid*, para. 124.5.

⁷⁷¹ *Ibid*, para. 124.6.

⁷⁷² *Ibid*, para. 124.7.

⁷⁷³ *Ibid*, para. 124.8.

⁷⁷⁴ *Ibid*, para. 124.9.

⁷⁷⁵ *Ibid*, para. 124.10.

the State is a party to and applicable international humanitarian law during the 4.5 years preceding the interactive dialogue.⁷⁷⁶

Implementation is a cornerstone of Universal Periodic Review, which translates accepted recommendations and voluntary commitments into action and improves the human rights situation at the ground level. Since successful implementation is measured against adherence to accepted recommendations and voluntary commitments, Poland and South Africa dilute the criteria against which the efficacy of its implementation can be measured by refraining from providing concrete responses to recommendations. Although Poland and South Africa did not overtly accept the recommendations they received during the first session, there was evidence that several recommendations were implemented, in whole or in part, prior to the second cycle of review. Bahrain and the Netherlands provided clear responses and accepted the majority of recommendations received during the first cycle, drawing a clearer delineation on its scope of accountability during future cycles of review. Brazil was the only State of the five selected that accepted all of the recommendations it received during the first session, thus demonstrating its commitment towards participating in the review process and clearly defining the criteria against which it will be evaluated in future cycles.

Although Bahrain, the Netherlands, and Brazil provided clearer responses to the recommendations made during the first session, none of these States was able to implement accepted recommendations in full prior to the thirteenth session. As Universal Periodic Review is a cyclical process, States must continually strive towards implementation of accepted recommendations and voluntary commitments stemming from the previous cycle. Given that human rights challenges are dynamic in each State, vary among States, and depend on a number of factors, such as war, poverty, natural disasters, implementation is an on-going challenge and it will be difficult to fully implement complex and economically demanding recommendations before the next cycle, particularly in developing countries. It is unrealistic to expect that the human rights situation in each reviewed State will fully transform into what participating States envision it should be within a four and a half year period.

⁷⁷⁶ Human Rights Council, 'Review of the Work and Functioning of the Human Rights Council,' 12 April 2011, A/HRC/16/21, para. 3.

This is not to say, however, that the Universal Periodic Review process is failing. To have achieved these results during the infancy of the review process is an important milestone that should not be diminished. Universal Periodic Review is an imperfect process, but it is producing tangible results. As it would be unrealistic to expect that all States accept all recommendations and follow-up on each of those recommendations before their next review, the success of Universal Periodic Review should not be measured solely against these criteria. Suppose that a State under review accepted and implemented a single recommendation that made a significant impact on the lives of individuals. Would this be enough to suggest that Universal Periodic Review has made an impact on the realisation of human rights at the ground level? If not, how many small successes would it take? These are subjective questions that this thesis does not attempt address, but are important to consider when evaluating the efficacy of the review process as a whole.

Whereas implementation is an on-going process, progress can still be measured during each cycle of review, as required by Human Rights Council resolution 5/1, which states that ‘the subsequent review should focus, *inter alia*, on the implementation of the preceding outcome.’⁷⁷⁷ Further to a statement made by the President of the Human Rights Council on 9 April 2008, ‘the State under review is expected to follow up on the recommendations that enjoy its support as well as on voluntary commitments and pledges.’⁷⁷⁸ This responsibility is reiterated in Human Rights Council resolution 6/102, which specifies as a general guideline that the State concerned is required to make a presentation following-up from the previous review.⁷⁷⁹ As such, States must report on implementation of accepted recommendations and voluntary commitments during the presentation of their national report, clearly indicating whether accepted recommendations and voluntary commitments have been implemented. If implementation is incomplete prior to the next cycle of review, the State concerned should be required to provide a concrete timeline for implementation and report on any activities that are on-going. Setting clear benchmarks for implementation will

⁷⁷⁷ Human Rights Council, ‘Institution-building of the United Nations Human Rights Council,’ 18 June 2006, A/HRC/5/1, p. 6, para. 34.

⁷⁷⁸ Human Rights Council, ‘Modalities and Practices for the Universal Periodic Review Process,’ 9 April 2008, HRC/PRST/8/1, p. 2, para. 10.

⁷⁷⁹ General Assembly, ‘General Guidelines for the Preparation of Information under the Universal Periodic Review,’ 27 September 2007, A/RES/6/102, p. 1, para. G.

likewise assist recommending States and relevant stakeholders with monitoring implementation and following-up with concerned States.

3. The Role of Relevant Stakeholders in the Implementation and Follow-up Process

The primary purpose of Universal Periodic Review—to improve the realisation of human rights at the ground level—can only be achieved once accepted recommendations and voluntary commitments have been implemented. As per Human Rights Council resolution 5/1, ‘the outcome of the universal periodic review, as a cooperative mechanism, should be implemented primarily by the State concerned and, as appropriate, by other relevant stakeholders’⁷⁸⁰ once the outcome of the review has been adopted. Whereas the State concerned assumes primary responsibility for ensuring implementation of accepted recommendations and voluntary commitments, General Assembly resolution 60/251 tasks the Human Rights Council with promoting ‘the full implementation of human rights obligations undertaken by States and follow-up to the goals and commitments related to the promotion and protection of human rights.’⁷⁸¹ The resolution further stipulates that the work of the Council must ‘allow for subsequent follow-up discussions to recommendations and their implementation.’⁷⁸² Although these obligations are not limited to follow-up on implementation of recommendations stemming from Universal Periodic Review and include all of the mechanisms that fall under its mandate, the Human Rights Council plays an integral role in ensuring that States implement accepted recommendations arising from the review process.

Human Rights Council resolution 5/1 outlines the criteria for following-up on the outcome of the previous review and requires the Council to have a standing item on its agenda for Universal Periodic Review.⁷⁸³ The resolution also grants the Council with the authority to ‘decide if and when any specific follow-up is necessary’⁷⁸⁴ and

⁷⁸⁰ Human Rights Council, ‘Institution-building of the United Nations Human Rights Council,’ 18 June 2006, A/HRC/5/1, p. 5, para. 33.

⁷⁸¹ General Assembly, ‘Establishing the Human Rights Council and the Universal Periodic Review,’ 15 March 2006, A/RES/60/251, p. 3, para.5(d).

⁷⁸² *Ibid*, p. 4, para. 12.

⁷⁸³ Human Rights Council, ‘Institution-building of the United Nations Human Rights Council,’ 18 June 2006, A/HRC/5/1, p. 6, para. 35. Universal Periodic Review is standing item 6 on the agenda of the Human Rights Council.

⁷⁸⁴ *Ibid*, p. 7, para. 37.

to ‘address, as appropriate, cases of persistent non-cooperation with the mechanism.’⁷⁸⁵

Although implementation is a cornerstone of the Universal Periodic Review process, with the onus resting primarily with the State concerned, the international community can assist with implementation of accepted recommendations by providing ‘capacity-building and technical assistance in consultation with, and with the consent of, the country concerned.’⁷⁸⁶ As discussed above, States requiring assistance during the implementation phase can draw from the Voluntary Fund for Financial and Technical Assistance and Voluntary Fund for Technical Assistance and Cooperation.⁷⁸⁷ Whilst State reliance on these funds to implement long-term outcomes is not sustainable, States drawing from one or more of these funds can implement short to medium term measurable outcomes with specific indicators.

Stakeholders likewise assume an integral role in promoting State implementation of the outcome of the review by publicising the outcome of the review, lobbying States to fully and promptly implement the outcome of the review, monitoring implementation, and following-up with States when gaps arise.⁷⁸⁸ Relevant stakeholders can also organise public viewings of the webcast of the review and request that government officials discuss the outcome of the review and next steps towards implementation.⁷⁸⁹ Amnesty International, UPR Info, and the International Service for Human Rights are examples of non-governmental organisations that have made a significant contribution in this regard during the implementation and follow-up stages of Universal Periodic Review.

Amnesty International is actively involved in Universal Periodic Review by monitoring and following-up on the results from previous cycles. At the time of

⁷⁸⁵ *Ibid*, p. 7, para. 38.

⁷⁸⁶ *Ibid*, p. 6, para. 36.

⁷⁸⁷ Human Rights Council, ‘Establishment of Funds for the Universal Periodic Review Mechanism of the Human Rights Council,’ 28 September 2007, A/HRC/RES/6/17; Office of the High Commissioner for Human Rights, ‘Terms of Reference for the Voluntary Fund for Financial and Technical Assistance for the Implementation of the Universal Periodic Review,’ 2009, available at: http://www.ohchr.org/Documents/HRBodies/UPR/TOR_TF_for_TC_assistance_UPR.pdf, para. 14, p. 3; Human Rights Council, ‘Enhancement of Technical Cooperation and Capacity-building in the Field of Human Rights,’ 17 October 2011, A/HRC/18/18.

⁷⁸⁸ *Ibid*, p. 7, para. 33.

⁷⁸⁹ Amnesty International, ‘The Role of Civil Society,’ available at: <http://www.amnesty.org/en/united-nations/universal-periodic-review/role-of-civil-society>

writing, Amnesty International has prepared oral statements commenting on the outcome of the twelfth session of Universal Periodic Review, lobbied States prior to their reviews during the thirteenth session, published reports on each of the States reviewed during the thirteenth cycle,⁷⁹⁰ and prepared to submit information in advance of the fourteenth session.

Unlike Amnesty International, which is involved in a number of activities apart from Universal Periodic Review, UPR Info is the first non-governmental organisation to focus solely only on the review process. In support of the review process, UPR Info

collects information and documents on each review, provides detailed explanations and videos about the process and the role of each actor, publishes a monthly newsletter on the mechanism, conducts analyses of human rights issues raised during the process, looks into responses given to recommendations by States, publishes reports on the implementation of recommendations by countries at mid-term and manages an online database of all UPR recommendations.⁷⁹¹

Aside from these activities, UPR Info raised concerns during the sixteenth session of the Human Rights Council in March 2011 regarding ‘strengthening the UPR in order to ensure transparent and meaningful national consultations, improved opportunities for civil society and thorough assessments of implementation of UPR recommendations.’⁷⁹² The following are recommendations for improvement:

- a. Developing a mechanism to track the implementation of recommendations
- b. Requiring States to prepare mid-term reports on implementation
- c. Cooperating with the Office of the High Commissioner for Human Rights, the United Nations Treaty bodies, specialised agencies and special procedures.
- d. Contributing to the voluntary funds in support of implementation, if possible.
- e. Engaging non-governmental organisations in tracking the implementation of review outcomes.⁷⁹³

UPR Info also participated in a regional seminar in June 2011 concerning implementation and follow-up stemming from the first cycle of Universal Periodic

⁷⁹⁰ Amnesty International, ‘Countries under Review,’ 2012, available at: <http://www.amnesty.org/en/united-nations/universal-periodic-review/countries-under-review>

⁷⁹¹ UPR Info, ‘Annual Report 2011,’ Geneva, p. 20, available at: www.upr-info.org, available at: <http://www.upr-info.org/+UPR-Info-s-Annual-Report-2011+.html>

⁷⁹² *Ibid*, p. 6.

⁷⁹³ *Ibid*, p. 7.

Review, with particular focus on engaging non-governmental organisations.⁷⁹⁴ Following the seminar, a new project called ‘UPR Follow-up’ was launched to provide information regarding the implementation of the outcomes of the review process mid-way through the cycle of review and during the interactive dialogue of the following cycle, whilst drawing from input by the State concerned and relevant stakeholders.⁷⁹⁵

UPR Info has compiled the largest breadth of statistics regarding Universal Periodic Review of any other non-governmental or non-profit organisation, produces annual reports, regular newsletters, resources for States and stakeholders, and features a number of academic resources on its website, which contains relevant links, including to the UPR webcast. It has also produced a system for categorising recommendations (along with Professor Edward McMahon) and an Implementation Recommendation Index. UPR Info has served as the most valuable secondary resource for compiling information, particularly quantitative data, for this thesis.

The International Service for Human Rights provides legal advice, lobbies States on thematic human rights issues, works with human rights defenders, and delivers training on international human rights mechanisms, including in relation to Universal Periodic Review. The International Service for Human Rights monitors, analyses and produces summaries of each review and session, provides guidance to non-governmental organisations on participating in the review process, publishes quarterly updates on key issues raised during the review, including strengths and challenges, conducts research on thematic issues, and disseminates information on lessons learned from the process.⁷⁹⁶

Aside from engaging non-governmental organisations such as those mentioned above, Universal Periodic Review presents national human rights institutions with the opportunity to ‘assert their pivotal role nationally, as the national guardians of human rights, and internationally, through reporting and intervening before the Human Rights Council.’⁷⁹⁷ The International Coordinating Committee of National Human Rights

⁷⁹⁴ *Ibid*, p. 9.

⁷⁹⁵ *Ibid*, pp. 11-12.

⁷⁹⁶ International Service for Human Rights, ‘Strategic and Action Plan 2010-2012,’ available at: <http://www.ishr.ch/who-we-are-and-what-we-do/strategic-and-action-plan>

⁷⁹⁷ UPR Info, ‘The International Coordinating Committee of NHRIs Discusses Implementation of UPR Recommendations,’ 10 April 2012, available at: <http://www.upr-info.org/+International-Coordinating+.html>.

Institutions held a meeting regarding Universal Periodic Review on 22 March 2012 to discuss how to maximise the role of national human rights institutions in the review process.⁷⁹⁸ After sharing experiences, best practices and challenges during the meeting, delegates discussed developing a mechanism to coordinate efforts among the State concerned, local and national stakeholders when preparing action plans and reporting on the status of implementation.

As an example of best practice, the Canadian Human Rights Commission prepared annual human rights reports for Parliament, in addition to thematic reports. One such thematic report centres on addressing human rights issues that disproportionately afflict aboriginal people in Canada, which the Commission identifies as a priority. In turn, the Commission organised a number of consultations with First Nations people and Aboriginal groups, conducted research studies, and provided guidance to these communities on how to leverage the review process to instil change. Whilst the Canadian Human Rights Commission has adopted a number of best practices during the first stages of the review process, the national human rights institution in Denmark was particularly strong during the implementation and follow-up phase. The Institution developed a reference guide listing the government's responses to each of the recommendations received, accompanied by relevant commentary, and prepared an action plan to support implementation.

Although a number of States have submitted midterm progress updates on implementation following their first review, the second cycle provides the first opportunity to evaluate State implementation of accepted recommendations and voluntary commitments stemming from the previous cycle. At the time of writing, the thirteenth session (or the first session in the first cycle) has concluded, allowing for an analysis of implementation by the countries reviewed during this session. Overall, few States followed-up on implementation of accepted recommendations and voluntary commitments stemming from the first cycle of review. Most statements made by reviewing States during the interactive dialogue centred on human rights issues that arose since the first cycle of review. Another complication arises in cases when States fail to provide clear responses to recommendations. If a State has not clearly accepted a given recommendation, it is not responsible for its implementation in the following

⁷⁹⁸ *Ibid.*

cycle of review. Reviewing States may be confused about whether to raise such recommendations again in subsequent cycles or hold the State accountable for its implementation. In response to these challenges, the Human Rights Council clarified that States under review must provide clear responses from the second cycle onwards.⁷⁹⁹

Aside from an overall analysis, this chapter also provides a more nuanced evaluation of a random sample of one State from each regional group. An examination of implementation from the first cycle of review to the second by Bahrain, Brazil, Poland, the Netherlands and South Africa reveals a number of issues regarding implementation, namely that most States have followed through with implementing the majority of accepted recommendations and voluntary commitments to a degree, but full implementation remains outstanding. Bearing in mind that it would be unlikely to achieve 100% implementation between cycles, especially considering that some recommendations and commitments require long-term implementation, partial implementation is still a promising indication of the commitment of States to cooperate with the Universal Periodic Review process.

As demonstrated, key stakeholders, including the Human Rights Council, the Office of the High Commissioner for Human Rights, civil society organisations and national human rights institutions have assumed an integral role in monitoring implementation, publicising progress and outstanding action, lobbying States to develop and carry out national plans of action, and following-up on implementation. Stakeholders can offset State failure to follow-up on the outcomes of the previous review by tracking implementation of accepted recommendations and voluntary commitments and holding States under review accountable in future cycles. Moving forward, States and key stakeholders must not lose sight of the importance of implementation and work together to monitor, track, and follow-up with the State concerned, thus maximising the potential for tangibly improving the human rights situation at the ground level.

⁷⁹⁹ Human Rights Council, 'Review of the Work and Functioning of the Human Rights Council,' 12 April 2011, A/HRC/16/21, para.16; Human Rights Council, 'Institution-building of the United Nations Human Rights Council,' 18 June 2006, A/HRC/5/1.

Chapter 9

Strengthening Universal Periodic Review

Despite its many strengths, Universal Periodic Review is an imperfect mechanism in need of reform to address challenges and build on best practices in the context of the principles and objectives of the review to enhance the outcome. Whilst Universal Periodic Review has the potential to act as a vehicle for the realisation of human rights standards and obligations at the ground level on a global scale, the process can be improved at each stage to achieve optimum outcomes. From 2010 to 2011, the open-ended intergovernmental Working Group reviewed the functioning of the Universal Periodic Review mechanism,⁸⁰⁰ which addressed several gaps, but there is potential for further improvement. This chapter acknowledges the existing strengths and challenges of the review process and draws from lessons learned during the first cycle of review to identify best practices with a view to refining future cycles.

1. Strengths

Although there is potential to improve the Universal Periodic Review process in future cycles, this new human rights mechanism boasts a number of achievements. By design, Universal Periodic Review enhances the United Nations human rights monitoring mechanisms by holding all United Nations Member States accountable for all of their human rights obligations in a public and transparent forum, creating momentum to collaborate with relevant stakeholders, accept recommendations, make voluntary commitments, implement them and follow-up with other States on their obligations.

In preparation for the review process, States are required to continually reflect on the human rights situation at the ground level and involve civil society in the consultation process. Universal Periodic Review presents an unprecedented opportunity for dialogue and cooperation among government, national human rights institutions, non-governmental organisations, civil society, and other relevant stakeholders on protecting and promoting international human rights standards. The review addresses

⁸⁰⁰ Human Rights Council, 'Open-ended Intergovernmental Working Group on the Review of the Work and Functioning of the Human Rights Council, 12 October 2009, A/HRC/RES/12/1.

any previous gaps in communication among these entities by providing States with an impetus to conduct internal reviews of their human rights obligations and consult with civil society on a national basis,⁸⁰¹ thus ‘enhancing the participation of all relevant stakeholders.’⁸⁰²

Due to its cyclical nature, States that advance recommendations to the State under review are able to follow up on the implementation of accepted recommendations, or resubmit rejected recommendations during future cycles of review. Similarly, reviewed States are continually striving to improve their human rights records and demonstrate implementation of accepted recommendations and voluntary commitments insofar as is possible before the next cycle.

State participation, quality of delegations and willingness to accept recommendations are all indicators that States view Universal Periodic Review as a legitimate human rights monitoring mechanism and thus respect the review process by investing full participation. Unlike other United Nations human rights monitoring mechanisms, Universal Periodic Review boasted a 100% participation rate during its first cycle of review and instilled respect for reporting deadlines.⁸⁰³ With few exceptions, most States were represented by high quality delegations and accepted the majority of recommendations they received during the first cycle of review.⁸⁰⁴ These factors suggest that States under review are taking a serious approach towards improving human rights at the ground level, using Universal Periodic Review as a vehicle to achieve that goal.

⁸⁰¹ McMahon, Edward R., ‘The Universal Periodic Review: A Work in Progress: An Evaluation of the First Cycle of the New UPR Mechanism of the United Nations Human Rights Council,’ Friedrich Ebert Stiftung, September 2012, p.1.

⁸⁰² Human Rights Council, ‘Institution-building of the United Nations Human Rights Council,’ 18 June 2006, A/HRC/5/1, p. 2, para. 3(m).

⁸⁰³ Human Rights Council, ‘Support of the Human Rights Council for the Recovery Process in Haiti after the Earthquake of 12 January 2010: A Human Rights Approach,’ 28 January 2010, A/HRC/S-13/1, p. 2, para. 10. Haiti was unable to undergo its review when scheduled (in May 2010) due to the devastating earthquake in Haiti on 12 January 2010, as country’s resources needed to be redirected towards emergency disaster relief. Haiti’s review was rescheduled and took place in October 2011. The second cycle of review, however, may not achieve the same success rate for participation after Israel failed to submit its national report and attend its own review originally scheduled for 29 January 2013.

⁸⁰⁴ McMahon, Edward R., ‘The Universal Periodic Review: A Work in Progress: An Evaluation of the First Cycle of the New UPR Mechanism of the United Nations Human Rights Council,’ Friedrich Ebert Stiftung, September 2012, p. 23. Approximately ‘80 per cent of States [were] represented at least the Ministerial level at the interactive dialogue state of the review process.’

Bringing human rights to the forefront of domestic and international concern through continual consultation, monitoring, implementation, evaluation, and follow-up, the review process is the only universal mechanism for assessing the human rights record of all United Nations Member States. By holding Member States accountable for human rights obligations under the Universal Declaration of Human Rights, Universal Periodic Review widens the scope of accountability beyond those States that have ratified treaties corresponding with provisions found within the Declaration.

In addition to the immediately apparent advantages of the review process, Universal Periodic Review has the potential to become a comprehensive ‘human rights library’ of information on the status of human rights in every reviewed State. Such a library would record the human rights situation in a given State within a specific period from the perspectives of every major actor and stakeholder, including reports prepared by the State concerned, stakeholders, the Office of the Human Commissioner for Human Rights, and Working Group.⁸⁰⁵ Aside from this ‘written library,’ each interactive dialogue has been video recorded and is available online, meaning anyone can access the original ‘word for word’ account.⁸⁰⁶ These written and video libraries provide a reference point for reviewing States and stakeholders that follow-up with reviewed States on implementation and could serve as ‘an important tool for identifying areas where technical assistance and capacity building is needed.’⁸⁰⁷

The first cycle of review has also championed establishing precedents for future cycles, including the development of mid-term implementation reports⁸⁰⁸ and the acceptance of the majority of recommendations stemming from the interactive dialogue. Additional strengths emerging from the first cycle of review will be discussed in greater detail in the following sub-section on best-practices.

⁸⁰⁵ Office of the High Commissioner for Human Rights ‘Universal Periodic Review: Documentation,’ available at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/Documentation.aspx>

⁸⁰⁶ UN Web TV: The United Nations Live & On-demand, ‘Universal Periodic Review,’ available at: <http://webtv.un.org/meetings-events/>

⁸⁰⁷ McMahon, Edward R., ‘The Universal Periodic Review: A Work in Progress: An Evaluation of the First Cycle of the New UPR Mechanism of the United Nations Human Rights Council,’ Friedrich Ebert Stiftung, September 2012, p. 23.

⁸⁰⁸ *Ibid*, p.3.

2. Best Practices

‘The sharing of best practices among States and stakeholders’ is one of the primary objectives⁸⁰⁹ and outcomes⁸¹⁰ of the review process. During its 19th session, the Human Rights Council held a panel discussion on the ‘Sharing of best practices and promoting technical cooperation: paving the way towards the second cycle of the universal periodic review.’⁸¹¹ The panel discussion aimed to achieve several outcomes, including:

- a. sharing relevant experiences of States and stakeholders;⁸¹²
- b. the possibility of increasing assistance to States;
- c. keeping the Human Rights Council informed of ‘technical and capacity building efforts carried out by the OHCHR and UNDP to support States in the implementation of the outcome of the first cycle of UPR;’⁸¹³
- d. better-informing the Office of the High Commissioner for Human Rights and United Nations Development Program of the technical assistance and capacity building needs of States; and
- e. enhanced coordination among the relevant agencies in providing technical and capacity-building assistance to ‘support the implementation of the UPR outcome.’⁸¹⁴

In addition to the panel discussion held at an international level, the Office of the High Commissioner for Human Rights hosts regular regional and sub-regional meetings to ‘share experiences on follow-up to UPR outcomes and implementation of recommendations’⁸¹⁵ (with the participation of State representatives, national human rights institutions, civil society groups and UN agencies and programmes). Although a positive step forward, such panel discussions, regional and sub-regional meetings

⁸⁰⁹ Human Rights Council, ‘Institution-building of the United Nations Human Rights Council,’ 18 June 2006, A/HRC/5/1, p. 2, para. 4(d).

⁸¹⁰ *Ibid.*, p. 5, para. 27(b).

⁸¹¹ Human Rights Council, Panel Discussion on ‘Sharing of Best Practices and Promoting Technical Cooperation: Paving the Way Towards the Second Cycle of the Universal Periodic Review,’ 19th session, 21 March 2012, 12:00-15:00, Palais des Nations, Geneva.

⁸¹² The sharing of relevant experiences does not necessarily mean the sharing of best practices. The degree to which the panel discussion addressed the best practices of States, relevant stakeholders and UN agencies is unclear, as details of this panel discussion are not available to the public.

⁸¹³ *Ibid.*, p. 2.

⁸¹⁴ *Ibid.*

⁸¹⁵ Senegal hosted a regional meeting for West and Central Africa in July 2010. South Africa hosted a meeting for East and South Africa in September 2010. In March 2011, a regional meeting was held for Europe. Other regional meetings were held in Bangkok, Asuncion and Chile.

should take place on a more regular basis to maintain the spirit of shared learning and continual development throughout the review process.

Several best practices have emerged from the first cycle of review, setting positive precedents for future cycles, such as:

- a. making concrete, action-oriented recommendations with measurable outcomes;
- b. developing a national plan of action and providing updates on implementation under item 6 of the agenda of the Human Rights Council;
- c. establishing an inter-ministerial working group and/or steering committee comprised of government, the national human rights institution, and non-governmental organisations to monitor and track implementation of accepted recommendations and voluntary commitments;
- d. regularly reporting to the Human Rights Council, including through the submission of mid-term implementation reports;
- e. engaging civil society in the Universal Periodic Review process through regular consultations; and
- f. providing a record of concrete responses to all recommendations.

Bahrain, for instance, has developed a national plan of action and set up a steering committee of relevant stakeholders to monitor implementation.⁸¹⁶ Another example of best practice is State submission of issue reports detailing the status of implementation. During the first cycle of review several States submitted issue-specific reports on

⁸¹⁶ Permanent Mission of the Kingdom of Bahrain to the United Nations Office and Other International Organizations at Geneva, 'Kingdom of Bahrain's UPR Data Base Website,' 29 May 2009, available at: www.upr.bh.

implementation, including Argentina,⁸¹⁷ Azerbaijan,⁸¹⁸ Bahrain,⁸¹⁹ Benin,⁸²⁰ Chile,⁸²¹ Columbia,⁸²² Ecuador,⁸²³ Finland,⁸²⁴ the Former Yugoslav Republic of Macedonia,⁸²⁵ France,⁸²⁶ Japan,⁸²⁷ Mauritius,⁸²⁸ the Netherlands,⁸²⁹ Norway,⁸³⁰ Poland,⁸³¹

⁸¹⁷ Ministerio de Relaciones Exteriores Comercio Internacional y Culto: De la Nación Argentina, 'Informe de Avance Sobre el Cumplimiento de las Recomendaciones Formuladas a la Argentina en el Marco del Examen Periódico Universal,' 15va Sesión del Consejo de Derechos Humanos, 23 de Septiembre de 2010. Only available in Spanish.

⁸¹⁸ Permanent Mission of the Republic of Azerbaijan to the United Nations Office and Other International Organizations at Geneva, 'Interim Report of the Government of the Republic of Azerbaijan on the Implementation of the Recommendations by the Working Group of the UN Human Rights Council on the Universal Periodic Review with respect to the First Report of the Republic of Azerbaijan,' 17 January 2012.

⁸¹⁹ Permanent Mission of the Kingdom of Bahrain to the United Nations Office and Other International Organizations at Geneva, 'Kingdom of Bahrain's UPR Data Base Website,' 29 May 2009, available at: www.upr.bh.

⁸²⁰ Mission Permanente du Benin Apre de l'Office des Nations Unies et des Autres Organisations Internationales à Genève, 'Examen Périodique Universel Mise en œuvre des Recommendations Evaluation à Mi-parcours,' 7 March 2012. Only available in Spanish.

⁸²¹ The Permanent Mission of Chile of the United Nations Office and other International Organisations in Geneva, 'Letter to the Office of the U.N. High Commissioner for Human Rights,' 30 June 2009.

⁸²² Libertad y Orden, 'Columbia y el Examen Periódico Universal de Derechos Humanos ((EPU) ante el Consejo de Derechos Humanos de las Naciones Unidas,' available at: www.derechoshumanos.gov.co. Only available in Spanish.

⁸²³ 'Avances del Ecuador en el Cumplimiento de sus Compromisos Voluntarios ante el Consejo de Derechos Humanos en el Contexto del Examen Periodico Universal – EPR,' 31 March 2010. Only available in Spanish.

⁸²⁴ Ministry for Foreign Affairs of Finland, 'Recommendations Received by Finland during the Consideration of its Human Rights Situation by the Working Group on the Universal Periodic Review in March 2008, and the Actions Undertaken by the Government of Finland in Response to these Recommendations,' 11 June 2010.

⁸²⁵ The Ministry of Foreign Affairs of the Republic of Macedonia, 'Midterm Report of the Republic of Macedonia on Progress in Implementing Recommendations,' May 2009-December 2011.

⁸²⁶ France, 'Examen Periodique Universel de la France au Conseil des Driots de L'Homme (2008): Suivi à Mi-Parcours des Recommendations et des Engagements Complémentaires,' 2010. Only available in French.

⁸²⁷ The Government of Japan, 'Mid-term Progress Report by Japan on its Implementation of Recommendations made in May 2008,' March 2011.

⁸²⁸ Republic of Mauritius, 'Mid-Term Progress Report on the Implementation of the Recommendations Made during the Universal Periodic of Mauritius in February 2009,' February 2011.

⁸²⁹ The Netherlands, 'National Interim Report,' April 2010.

⁸³⁰ Norway, 'Universal Periodic Review Norway: A Report on Follow-up of the Recommendations of the United Nations Human Rights Council under the Universal Periodic Review Mechanism (UPR), June 2012.

⁸³¹ Ministry of Foreign Affairs of the Republic of Poland, 'Universal Periodic Review Mid-Term Progress Report by Poland,' February 2011.

Romania,⁸³² Slovenia,⁸³³ Spain,⁸³⁴ Switzerland,⁸³⁵ Ukraine⁸³⁶ and the United Kingdom.⁸³⁷ Of these, Columbia⁸³⁸ and Mauritius⁸³⁹ have also submitted mid-term reports on the status of implementation.

In a joint statement by the United Kingdom, Morocco and Brazil, 89 reviewed States made voluntary commitments to adopt best practices through

- i. ...restraint on the number of recommendations given to other states, by adhering to a maximum of two for each state—in order to try to bring the number of recommendations to a more manageable level, and ensure that the state under review will have the best chance to successfully implement their accepted recommendations;
- ii. ...high quality recommendations to other states, by ensuring that all recommendations are precise, practical, constructive, forward looking and implementable; and
- iii. [the preparation of] a Mid Term Report two years after our reviews, which updates on progress achieved in implementation of our recommendations.⁸⁴⁰

Other examples of best practices were championed by Poland, Switzerland, Norway, the Republic of Korea, Romania and the United Arab Emirates. Following its first review, Poland established an inter-ministerial working group,⁸⁴¹ whereas Switzerland

⁸³² Government of Romania, 'National Reform Programme Implementation Report,' October 2008.

⁸³³ Republic of Slovenia, 'Mid-Term Report on the Implementation of UPR Recommendations,' March 2012.

⁸³⁴ Spain, 'Seguimien to de las Recomendaciones Epu Aceptadasoir Espana,' 2011. Only available in Spanish.

⁸³⁵ Switzerland, 'Interim Assessment of the Implementation of the UPR Recommendations in Switzerland,' 30 April 2009.

⁸³⁶ The Permanent Mission of Ukraine to the United Nations Office and other International Organisations in Geneva, 'Interim Report of Ukraine on Implementation of the Recommendations Received by Ukraine,' 29 October 2010. Only available in Russian.

⁸³⁷ United Kingdom Mission to the Office of the United Nations and Other International Organisations at Geneva, 'Universal Periodic Review Mid-Term Progress Update by the United Kingdom of Great Britain and Northern Ireland on Its Implementation of Recommendations Agreed in June 2008.'

⁸³⁸ Libertad y Orden, 'Columbia y el Examen Periódico Universal de Derechos Humanos ((EPU) ante el Consejo de Derechos Humanos de las Naciones Unidas,' available at: www.derechoshumanos.gov.co. Only available in Spanish.

⁸³⁹ Republic of Mauritius, 'Mid-Term Progress Report on the Implementation of the Recommendations Made during the Universal Periodic of Mauritius in February 2009,' February 2011.

⁸⁴⁰ Quoted directly from UK-Morocco-Brazil, Joint Statement on the Universal Periodic Review, 15 March 2013, p. 2, available at: http://www.upr-info.org/IMG/pdf/89_states_gd_item6_mid-term_report_commitment.pdf.

⁸⁴¹ Ministry of Foreign Affairs of the Republic of Poland, 'Universal Periodic Review Mid-Term Progress Report by Poland,' February 2011.

conducted regular consultations and meetings with civil society throughout the review process.⁸⁴² Norway likewise provides an example of best practice by collating responses to all recommendations as a concrete reference for its level of implementation and a tool for follow-up.⁸⁴³ Other States, including the Republic of Korea, Romania and United Arab Emirates have been regularly reporting to the Human Rights Council on their implementation of accepted recommendations and voluntary commitments,⁸⁴⁴ whilst Switzerland has actively engaged and consulted with civil society throughout the Universal Periodic Review process.⁸⁴⁵

As demonstrated, a number of States have voluntarily adopted these practices, but the majority of States have yet to follow suit. Identifying and sharing best practices and encouraging all States to strive towards meeting these standards sets the foundation for continual improvement of human rights at the ground level in the State concerned and will allow the review process to evolve as a whole.

Non-governmental organisations have also adopted best practices in relation to their role in the review process. UPR Info, the world's leading non-governmental organisation in support of the Universal Periodic Review process, has developed a database of recommendations and voluntary commitments arising from the review, which can be filtered based on the session number, recommending State, State under review, human right, recommendations and voluntary commitments, and action category. Aside from developing this invaluable research tool, which forms the basis for many of the findings in this thesis, UPR Info also produces regular newsletters reporting on recent developments in relation to the review process, including reports on the review of each State. The organisation has also categorised recommendations into five action categories based on the degree of action required of the State in implementing each recommendation. In addition, UPR Info provides guidance to relevant stakeholders and States on how to participate actively in the review process.

⁸⁴² Switzerland, 'Interim Assessment of the Implementation of the UPR Recommendations in Switzerland,' 30 April 2009.

⁸⁴³ Norway, 'Universal Periodic Review Norway: A Report on Follow-up of the Recommendations of the United Nations Human Rights Council under the Universal Periodic Review Mechanism (UPR), June 2012.

⁸⁴⁴ UPR Info, 'Best Practices on Follow-up,' 2013 available at: http://www.upr-info.org/followup/index/page/best_practices

⁸⁴⁵ *Ibid.*

It is imperative that United Nations Member States, non-governmental and non-profit organisations and national human rights institutions maintain an open and continual dialogue on sharing best practices and setting realistic, concrete benchmarks for other States, relevant stakeholders and national human rights institutions to adopt these practices and enhance the review process as a whole. Despite the best practices detailed above, several key challenges have arisen during the review process, which need to be addressed in order to strengthen the outcome of future cycles.

3. Key Challenges

Rather than dismissing the Universal Periodic Review process as being ineffectual due to its shortcomings, key challenges should be addressed head on with a view to identifying workable solutions that could be adopted in future cycles. Perhaps due to the public and transparent nature of the interactive dialogue, most States appear to be concerned about being seen as cooperating with the UPR mechanism and fulfilling their international human rights obligations. This is both a strength and weakness of the review process. There is a danger that some States will take the minimal action necessary to achieve the appearance of cooperation. For instance, States may appear to adopt a high percentage of recommendations by accepting those requiring minimal action, whilst rejecting those requiring robust action and resources, creating the illusion that they are actively cooperating with the review process. On the other hand, State concern over appearing to meet human rights obligations could suggest that States under review respond to pressure from members of the public, civil society, relevant stakeholders and recommending States. The success of Universal Periodic Review is predicated on States acting in good faith and investing full cooperation and participation into all stages of the review, not simply appearing to do so.

The review process faces a number of other significant challenges, such as:

- a. limited resources to provide States with technical and capacity building assistance;
- b. maintaining universal participation among United Nations Member States;
- c. State failure to provide clear responses to recommendations;
- d. a lack of concrete, realistic and action-oriented recommendations;
- e. relevant stakeholders are excluded from some stages of the UPR process;
- f. a lack of a methodical mechanism to measure levels of implementation; and

- g. a lack of systematic follow-up with reviewed States regarding implementation of accepted recommendations and voluntary commitments and the possibility of now accepting previously rejected recommendations.

Another key challenge is maintaining the 100% participation rate established by all 192 Member States that actively participated in the review process during the first cycle by submitting reports, being subject to review and participating in the review of other Member States. Despite the voluntary nature of Universal Periodic Review, the universal participation of States during the first cycle suggests a willingness to have an open, transparent dialogue on improving the realisation of human rights standards worldwide. The second cycle of review, however, may not achieve the same success rate for participation after Israel failed to submit its national report and attend its own review originally scheduled for 29 January 2013.⁸⁴⁶ As Israel is the first State that failed to participate in the review, it remains to be seen what measures the Council will take to address such situations. Paragraph 38 of Human Rights Council resolution 5/1, stipulates that: ‘After exhausting all efforts to encourage a State to cooperate with the universal periodic review mechanism, the Council will address, as appropriate, cases of persistent non-cooperation with the mechanism.’⁸⁴⁷ The Human Rights Council rescheduled Israel’s review for October/November 2013; it remains to be seen whether any further action will be necessary.

The primary means of improving the human rights situation in a State under review via the UPR process begins with the acceptance of meaningful recommendations and making voluntary commitments. Most States have accepted the majority of recommendations they received during the first cycle of review; however, the type of recommendations posed could be strengthened. By making recommendations that require little action, such as those requiring ‘consideration’ or ‘continuing action,’ recommending States waste the opportunity to suggest tangible, realistic and action-oriented improvements that the State concerned may accept and implement. Just as there are challenges associated with the content of recommendations, unclear State responses to recommendations diminish the efficacy of the review process. It is

⁸⁴⁶ Bobb, Donn, ‘Human Rights Council Moves to Reschedule Examination of Israel’s Human Rights Record,’ *News and Media: United Nations Radio*, 29 January 2013, available at: <http://www.unmultimedia.org/radio/english/2013/01/human-rights-council-moves-to-reschedule-examination-of-israels-human-rights-record/>

⁸⁴⁷ Human Rights Council, ‘Institution-building of the United Nations Human Rights Council,’ 18 June 2006, A/HRC/5/1.

imperative for a State under review to clearly indicate whether it accepts or rejects each recommendation, rather than provide a general or no response.⁸⁴⁸ Reviewing States and States under review drive the review process. Like a cog in a machine, each stage of the review process and the role of all actors involved are interconnected and must work in tandem to produce the desired result.

Without having a mechanism for systematically following-up on accepted recommendations and voluntary commitments, it is much more challenging to determine the degree to which all reviewed States have implemented the outcome of the first review. The absence of such a mechanism also raises the issue of repetition among recommending States due to the confusion that arises over whether a State has previously accepted and/or implemented a given recommendation. Perhaps the lack of a follow-up mechanism stems from the absence of clear modalities set out by the Human Rights Council to measure levels of implementation based on specific benchmarks and outcomes.

Another key challenge that arose during the first and second cycles of review is the approved level of participation among relevant stakeholders in the review process. The participation of relevant stakeholders in Universal Periodic Review is limited in a number of ways, namely the prohibition of non-ECOSOC accredited stakeholders from taking the floor during the plenary session, and the dilution of stakeholder reports into a summary prepared by the Office of the High Commissioner for Human Rights and their exclusion from the interactive dialogue.

Despite the challenges that have emerged throughout the Universal Periodic Review process, there are a number of concrete measures that could be adopted to remedy these shortcomings in future cycles. Whilst the Human Rights Council adopted several modest reforms following a review of its functions in 2010-2011, it is just one step towards achieving the objectives of the review process in practice.

⁸⁴⁸ Human Rights Council, 'Review of the Work and Functioning of the Human Rights Council,' 12 April 2011, A/HRC/16/21, para.16; Human Rights Council, 'Institution-building of the United Nations Human Rights Council,' 18 June 2006, A/HRC/5/1.

4. Strengthening the Universal Periodic Review Process

Drawing from the strengths and challenges during the first cycle of Universal Periodic Review, it is clear that several improvements can be implemented in future cycles of review to strengthen the process and the results it produces. The following suggested methods for strengthening the Universal Periodic Review process begin with proposals to address overarching issues, then move on to discuss strategies that could be implemented at each stage of the process.

There are a number of steps that could be taken, overall and at each stage of the Universal Periodic Review process, towards improving its efficacy and ensuring this new universal human rights mechanism achieves its primary purpose, which is to improve the realisation of human rights at the ground level in every State under review. The first part of this section discusses ways to improve Universal Periodic Review as a whole by enhancing the participation of national human rights institutions, non-governmental organisations and relevant stakeholders and the provision of technical and capacity-building assistance. The sub-sections that follow contain specific recommendations at each stage of the process. Many of the suggestions contained in this section could be implemented within the existing modalities of the Universal Periodic Review mechanism, although others call for reform.

4.1 Participation of National Human Rights Institutions, Non-governmental Organisations and Relevant Stakeholders

Strengthening the role of national human rights institutions, non-governmental organisations and relevant stakeholders has significant potential to enhance the outcome of the review process. The degree to which stakeholders are able to participate in Universal Periodic Review is predicated by whether they have ECOSOC status. Obtaining ECOSOC status is a prerequisite that organisations must satisfy before being able to participate in the review process in full within its current framework. Attending Working Group sessions, making statements after the adoption of the outcome document, and organising side events during sessions of the Human Rights Council is reserved for stakeholders with ECOSOC status. Unfortunately, non-governmental organisations have faced challenges when applying for ECOSOC status. The United Nations Committee on Non-Governmental Organisations approved 159 applications for consultative status in January 2013, but a further 180 applications are

outstanding. Research undertaken by the International Service for Human Rights reveals that applications are most frequently delayed for non-governmental organisations dealing with gender identity, sexual orientation, minority issues, reproductive rights, women's rights, and freedom of expression.⁸⁴⁹ Given that States are held accountable for these rights during the review, it is imperative that accreditation 'be accessible, expeditious and based on fair, transparent and non-discriminatory criteria.'⁸⁵⁰

Relevant stakeholders can participate in the review by engaging in public consultations, submitting reports to the Office of the High Commissioner for Human Rights to potential inclusion in the summary of stakeholder reports, lobbying States to raise recommendations on their behalf, monitoring implementation of the outcome of the review, and follow-up on outstanding commitments. However, stakeholder participation could be enhanced by allowing the national human rights institution to present a summary of stakeholder submissions at the beginning of the interactive dialogue to provide an opportunity for stakeholders to raise issues for discussion among the States concerned earlier on in the review process. Stakeholder participation in these areas is detailed further in the corresponding sub-sections 4.2 to 4.8 below.

4.2 Technical Assistance and Capacity-Building

Full participation in the review and State implementation of resource intensive human rights obligations are contingent on the availability of funding, as recognised in resolution 6/17, which calls for the 'establishment of funds for the Universal Periodic Review mechanism of the Human Rights Council.'⁸⁵¹ In response, the Human Rights Council established a Voluntary Trust Fund 'to facilitate the participation of developing countries, particularly least developed countries, in the universal periodic review mechanism.'⁸⁵² The Voluntary Fund for Financial and Technical Assistance was also established to provide 'a source of financial and technical assistance to help countries implement recommendations emanating from the universal periodic review

⁸⁴⁹ International Service for Human Rights, 'States Continue to Silence Human Rights NGOs at the UN,' 18 February 2013.

⁸⁵⁰ *Ibid.*

⁸⁵¹ Human Rights Council, 'Establishment of Funds for the Universal Periodic Review Mechanism of the Human Rights Council,' 28 September 2007, A/HRC/6/17.

⁸⁵² *Ibid.*, para. 4.

in consultation with, and with the consent of, the country concerned⁸⁵³ in line with the intended outcome to provide ‘technical assistance and capacity-building.’⁸⁵⁴ A Voluntary Fund for Technical Assistance and Cooperation, administered by the High Commissioner for Human Rights, is also available to draw from. States under review that lack the resources to participate in the review or implement recommendations can draw from voluntary contributions to these Funds for technical assistance and capacity-building assistance.

Whilst the Human Rights Council committed to strengthening and operationalising the Voluntary Fund for Financial and Technical Assistance in a review of its work and function, it is unclear how the Council will achieve this.⁸⁵⁵ Determining how to strengthen the Funds begins with reflecting on how they have contributed towards implementation in practice. The Office of the High Commissioner on Human Rights took a step in this direction when it issued a questionnaire to States and stakeholders⁸⁵⁶ on the benefit of the Voluntary Fund for Financial and Technical Assistance⁸⁵⁷ to the implementation of accepted recommendations.⁸⁵⁸ Several recommendations for improvement emerged from the results of this questionnaire, which could be implemented to leverage the full potential of the Voluntary Funds, including:

- a. Automatically allocating funds to assist least developed countries requiring resources to implement accepted recommendations that have specific measurable outcomes within a set period.
- b. Making the funds available to ‘least developed countries, newly emerging or restored democracies, countries where there has been a regression in human

⁸⁵³ *Ibid.*, para. 3.

⁸⁵⁴ Human Rights Council, ‘Institution-building of the United Nations Human Rights Council,’ 18 June 2006, A/HRC/5/1. Human Rights Council, ‘Institution-building of the United Nations Human Rights Council,’ 18 June 2006, A/HRC/5/1, p. 4, para. 5(d).

⁸⁵⁵ Human Rights Council, ‘Follow-up to the Human Rights Council Resolution 16/21 with regard to Universal Periodic Review,’ 19 July 2011, A/HRC/DEC/17/119, pp. 4-5, paras. 19-21.

⁸⁵⁶ Human Rights Council, ‘Compilation Prepared by the Office of the United Nations High Commissioner for Human Rights, in Accordance with Paragraph 10 of Human Rights Council Resolution 16/22,’ 26 December 2011, A/HRC/19/50, fn. 1, p. 3. The term ‘stakeholders’ refers to ‘NGOs, national human rights institutions, human rights defenders, academic institutions and research institutes, regional organizations, as well as civil society representatives.’

⁸⁵⁷ Human Rights Council, ‘Compilation Prepared by the Office of the United Nations High Commissioner for Human Rights, in Accordance with Paragraph 10 of Human Rights Council Resolution 16/22,’ A/HRC/19/50, 26 December 2011.

⁸⁵⁸ *Ibid.*, pp. 18-29, paras. 5-17. Because only ten States and eleven stakeholders responded, the results are not fully representative of the opinions held by the full range of States and stakeholders involved in the Universal Periodic Review process.

rights as well as small and vulnerable States, which face particular challenges in attaining the realization of human rights.’⁸⁵⁹

- c. Limiting assistance drawn from Voluntary Funds to costs associated with implementation of the outcome of the review process.
- d. Funding should continue to be provided to States under review, rather than stakeholders, as the ultimate responsibility for implementing recommendations rests with the State and the administration of such funding should be decided by the State concerned.⁸⁶⁰
- e. Grouping the accepted recommendations and voluntary commitments of developing and least developed States requiring assistance into categories, including recommendations the State can implement on its own and those for which it requires assistance to implement in order to better assess technical and capacity-building needs.
- f. Keeping a record of State initiatives arising from Universal Periodic Review that require technical and capacity-building assistance.⁸⁶¹
- g. Designating a national focal point, such as the national human rights institution, to coordinate implementation of recommendations to enhance capacity-building and reduce financial pressure on States requiring assistance.
- h. Regularly reviewing the ‘internal and external efficiency and operationality’⁸⁶² of the Fund.
- i. Streamlining the application process for access to the Voluntary Funds to ensure voluntary contributions are made in a timely manner, allowing the ‘OHCHR and beneficiaries to effectively and efficiently plan and implement the programmed activities.’⁸⁶³
- j. Seeking sponsorship and contributions towards the voluntary funds from independent donors and ‘forming strategic partnerships with the private sector and the media.’⁸⁶⁴
- k. Requiring States seeking funds to submit action plans to implement recommendations.⁸⁶⁵

Following through with the above recommendations would improve access to, administration of and potentially increase contributions to the Voluntary Funds,

⁸⁵⁹ *Ibid*, p. 4, para.8 (Guyana).

⁸⁶⁰ Civicus proposed that funds be made available to stakeholders in response to the questionnaire prepared by the Office of the High Commissioner for Human Rights regarding the allocation of Voluntary Funds. *Ibid*, p. 5, paras. 14-16.

⁸⁶¹ *Ibid*, pp. 5-6, para.10.

⁸⁶² *Ibid*.

⁸⁶³ *Ibid*.

⁸⁶⁴ *Ibid*, p. 6, para.23 (Mauritius).

⁸⁶⁵ *Ibid*, p. 6, para.24.

providing least developed and developing States with the capacity-building and technical assistance required to implement the outcomes of the review process without having to further rely on the Voluntary Fund for Technical Cooperation in cases where support from the Voluntary Funds is insufficient, thus enhancing ‘State’s capacity and [access to] technical assistance.’⁸⁶⁶

4.3 Consultation

The review cycle begins with preparations for national consultations approximately 10-12 months prior to the interactive dialogue. States under review have an obligation to hold public consultations with civil society, national human rights institutions, non-governmental organisations, research centres, human rights experts, and other relevant stakeholders; however, some States, such as Switzerland, conduct consultations throughout the entire review cycle.⁸⁶⁷ In preparation for national consultations, the State concerned must widely publicise the details of upcoming consultations, providing sufficient notice, and ensure consultations are accessible to the public in order to ‘ensure participation of all relevant stakeholders.’⁸⁶⁸ The State concerned can also disseminate information explaining the role of civil society in the review process and encouraging participation in the consultation process.⁸⁶⁹

Consultations should take place in an open, transparent and participatory environment. Discussions during national consultations should identify strengths, challenges, current trends and debates to define the human rights situation in the given State and discuss proposals for improvement. Denmark demonstrated an example of best practice at the consultative stage by conducting broad consultations with national courts, parliament, the ombudsman, auditor general, law and bar association, the Board for Equal Treatment, the Danish Data Protection Agency, National Council for Children, the Council for Socially Marginalized People and the Equal Opportunities Centre for Disabled Persons. Other States under review could learn from Denmark’s

⁸⁶⁶ Human Rights Council Resolution 5/1, ‘Institution-building of the United Nations Human Rights Council,’ 18 June 2006, p. 3, para. 4(e).

⁸⁶⁷ *Ibid.*

⁸⁶⁸ *Ibid.*, p. 3, para.4(m).

⁸⁶⁹ Lis Dhandale, ‘The Role of Civil Society,’ *Universal Periodic Review First Cycle: Reporting Methodologies from the Positions of the State, Civil Society and National Human Rights Institutions*. The Danish Institute for Human Rights, p. 26.

example and ensure consultations are broad, accessible and inclusive of all relevant stakeholders.

Although the responsibility for holding consultations rests with States under review, stakeholders should likewise assume an active role by disseminating information explaining the Universal Periodic Review process. Consultations should be held before the deadline for the submission of stakeholder and national reports to the Office of the High Commissioner, in order for any issues that are raised to be reflected in these reports. Stakeholders could assist States under review with preparing a national report that ‘reflects 1) a real and comprehensive picture of the actual human rights situation in the country, 2) the efforts made by the State to progressively improve it and 3) that the proposed recommendations to improve the situation are important, relevant and substantial.’⁸⁷⁰ States under review would receive the most robust feedback and input into the preparation of their national reports by providing civil society and relevant stakeholders with a draft copy for discussion in advance of or during the consultation.

In carrying out this obligation, States under review could find relief by working with their national human rights institutions to coordinate, organise and host public consultations in preparation for the next cycle of review. States requiring further assistance with funding nation-wide consultations can apply for funding from the Voluntary Trust Fund for Financial and Technical Assistance.⁸⁷¹

4.4 Reporting

A national report, summary of stakeholder reports and compilation of UN documentation form the basis for discussion during the interactive dialogue. The variety of sources of information available to recommending States helps to ensure the review is a ‘cooperative mechanism based on objective and reliable information.’⁸⁷² States under review should share a draft of their national report with civil society and

⁸⁷⁰ *Ibid*, p. 31.

⁸⁷¹ Office of the High Commissioner for Human Rights, ‘Terms of Reference for the Voluntary Fund for Financial and Technical Assistance for the Implementation of the Universal Periodic Review,’ 2009, available at:

http://www.ohchr.org/Documents/HRBodies/UPR/TOR_TF_for_TC_assistance_UPR.pdf, p. 1, para. 6 (c), reads: ‘(c) the exchange of information and the sharing of best practices, including through the organization of regional and sub-regional meetings, seminars, consultations and other interactions.’

⁸⁷² Human Rights Council, ‘Institution-building of the United Nations Human Rights Council,’ 18 June 2006, A/HRC/5/1, p. 3, para. 4(b).

relevant stakeholders for their feedback prior to submitting a final copy to the Office of the High Commissioner for Human Rights. After the State concerned has prepared its national report, any commitments should be tabled in Parliament, as was done in Canada.⁸⁷³ States would thus be accountable for these commitments on a domestic level as well as during the review process.

Reports prepared by the State under review, stakeholders and the Office of the High Commissioner for Human Rights should cluster issues, voluntary commitments in the national report and recommendations in the stakeholder and Office of the High Commissioner for Human Rights reports. Clustering voluntary commitments and recommendations will avoid confusion over where overlap arises and assist recommending States and stakeholders identify common ground.

The Office of the High Commissioner for Human Rights prepares a summary of stakeholder reports for each State under review, which is available on its website, but the original, individual stakeholder reports are not. It may not be possible for the Office of the High Commissioner for Human Rights to summarise all of the issues raised in stakeholder reports without omitting anything. Ensuring stakeholder reports are accessible broadens the scope of information available to recommending States will better inform States that take the floor during the interactive dialogue and potentially enhance the quality of recommendations.

Whilst it is common practice for States under review to submit national reports prior to the interactive dialogue, not all States submit mid-term reports on progress with implementing the outcome of the previous review. The submission of mid-term reports would encourage States to begin developing a national plan of action for implementing recommendations early-on in the review cycle and have a clear vision of outstanding obligations. Mid-term reports can also provide a reference point for recommending States when following-up on the implementation of recommendations.

⁸⁷³ Parliament of Canada, The Standing Senate Committee on Human Rights, 'Report of the Committee: Canada's Universal Periodic Review before the United Nations Human Rights Council Standing Senate Committee on Human Rights Second Report,' 28 May 2009, available at: <http://www.parl.gc.ca/Content/SEN/Committee/402/huma/rep/rep02may09-e.htm>

4.5 Interactive Dialogue

At the heart of Universal Periodic Review rests the interactive dialogue—the stage when recommending States pose comments, questions and recommendations to the State under review regarding the human rights situation in that country. This stage of the review process could be enhanced by allowing the national human rights institution to present a summary of stakeholder reports at the beginning of the interactive dialogue, ensure recommendations are clear, concise, avoid duplication, avoid praise except to identify best practices and have specific, measurable outcomes to best improve ‘the human rights situation on the ground.’⁸⁷⁴ States could also consider including an international human rights expert in their delegations to translate concern over human rights violations into the form of recommendations that can have an impact on the realisation of human rights at the ground level.

National reports (presented by the State under review) are the only reports that are presented during the interactive dialogue. Allowing the national human rights institution to present the compilation of stakeholder reports at the beginning of the interactive dialogue would provide recommending States with a broader understanding of the human rights situation in the State under review and permit stakeholders to raise issues prior to the plenary session. Independent organisations and stakeholders, as a whole, are less likely than States to politicise reporting and ensure recommending States receive an accurate portrayal of the human rights record of the State concerned, as States under review have a vested interest in omitting serious issues to avoid criticism and public pressure.

Universal Periodic Review provides an opportunity for UN Member and Observer States to make constructive recommendations for improving the human rights situation at the ground level in the State concerned. Speaking time per recommending State is necessarily limited during the interactive dialogue to accommodate all speakers. At present, speaking time can be reduced from three to two minutes for all States, so that all States that join the speakers’ list have the opportunity to make a statement.⁸⁷⁵ If this time reduction is insufficient in allowing all States to take the floor,

⁸⁷⁴ Human Rights Council, ‘Institution-building of the United Nations Human Rights Council,’ 18 June 2006, A/HRC/5/1, p. 3, para. 4(a).

⁸⁷⁵ Human Rights Council, ‘Follow-up to the Human Rights Council Resolution 16/21 with regard to Universal Periodic Review,’ 19 July 2011, A/HRC/DEC/17/119, Part IV, paras. 5-6, p. 2.

speaking time will be divided evenly among them.⁸⁷⁶ Given the limited amount of time each State has to take the floor, statements should be clear, concise and avoid duplication.

Unless done so to highlight best practices that all other States should aspire towards, statements of praise should be replaced with concrete recommendations. States must ensure their recommendations are clear and concrete, referring to a specific issue, timeframe for implementation, and measurable outcome. Recommendations should be action-oriented, and avoid suggesting that States under review merely ‘consider’ or ‘continue’ action, to ensure recommendations further the impact of the outcome of the review process. Recommendations should further focus on the human rights standards and obligations applicable to the State under review to avoid exceeding the scope of the review process. To avoid duplication of recommendations and situations where already limited speaking time is further reduced, recommending States should be encouraged to provide joint-recommendations. Too many recommending States taking the floor during the interactive dialogue reduces speaking time to the point where no meaningful recommendations can be made. More attention should be invested into preparing for the review process in order for recommending States to collaborate, limit overlap and ensure all of the key issues are raised.

States under review could also consider including an expert in the field of human rights in their delegations, as State representatives who dominate the interactive dialogue will likely lack the same level of knowledge and expertise. States should continue to seek highly qualified candidates to form gender-balanced delegations, including one or more international human rights expert to provide guidance on addressing the most pressing human rights issues in the form of recommendations, making the best use of limited speaking times, and ensuring that recommendations are in line with the criteria set out for the review process.

In these ways, recommending States, States under review and relevant stakeholders can work together to maximise the potential of the interactive dialogue and yield the most significant outcome. The following sub-section discusses how the report of the

⁸⁷⁶ *Ibid*, para.7, p. 2.

Working Group phase of Universal Periodic Review can be modified to enhance the efficacy of outcomes stemming from the review process.

4.6 Report of the Working Group

A different set of three troika prepares a Working Group report following the interactive dialogue of each State under review. The report should consist of ‘a summary of the interactive dialogue, [reflecting] recommendations and/or conclusions made by delegations during the interactive dialogue.’⁸⁷⁷ Particularly when there are a high number of recommending States or a high number of recommendations in general, clustering recommendations during the reporting process will clarify the outcome of the review and simplify the follow-up process and ensure the review is not ‘overly burdensome to the concerned State or to the agenda of the Council.’⁸⁷⁸ Otherwise, it could distort the outcome of the review. For instance, the State concerned could indicate that it has implemented five recommendations on the same issue, creating the illusion that the State has taken more action towards implementing recommendations than it actually has. Clustering and sorting large numbers of recommendations will also assist recommending States and relevant stakeholders with following-up on the outcome of the review by streamlining the number of recommendations made and thus those requiring follow-up. The following stage of the review is one of the most crucial, as it centres on the State concerned taking concrete action towards realising the outcome of the review.

4.7 Implementation

There are a number of steps that can be taken towards ensuring implementation is transparent, measurable and timely. States under review assume primary responsibility for implementing accepted recommendations and voluntary commitments and should proactively provide regular reports available to all interested parties. Whilst many States have done so voluntarily, reviewed States should be required to develop national plans of action, along with measurable outcomes and timelines for implementation,

⁸⁷⁷ Human Rights Council, ‘Modalities and Practices for the Universal Periodic Review Process,’ 9 April 2008, HRC/PRST/8/1, para. 8.

⁸⁷⁸ Human Rights Council, ‘Institution-building of the United Nations Human Rights Council,’ 18 June 2006, A/HRC/5/1, p. 2, para. 3(h).

and submit mid-term reports on implementation of outcomes from the previous cycle of review.

As primary organs of each State, Parliament and Government work in tandem to fulfil commitments arising from the review process and execute plans of action for implementation. The duty of Parliament rests with ensuring domestic legislation reflects the State's international human rights obligations, whereas Government is responsible for policy reform to meet this same end. Naturally, the work of one organ contributes towards and influences the other. Legislative amendments could increase budget allocations, adopt amendments to existing legislation, and develop new legislation, as necessary to implement accepted recommendations.⁸⁷⁹ States could reform policies to reflect a multi-year plan for implementing accepted recommendations and voluntary commitments, complete with measurable outcomes within given timeframes and regular internal evaluations before the next cycle of review.⁸⁸⁰

Stakeholders can encourage the State concerned to hold consultations following the review, where stakeholders and civil society can work with the State to develop implementation strategies and agree on achievable, measurable goals within a set time frame. These consultations would also provide a forum for the State to partner with stakeholders, civil society and relevant experts to implement its recommendations and provide regular updates on progress thereafter.

In order to be able to implement long-term, costly recommendations, States require sufficient levels of capacity-building, technical capability and resources, which can pose a challenge given the vast disparity of wealth among Member States. Developing and least developing States are able to draw from the Voluntary Trust Fund for Participation in the Universal Periodic Review mechanism and the Voluntary Fund for Financial and Technical Assistance to support their implementation of accepted recommendations and voluntary commitments. However, these Funds are not a source of sustainable funding for States that are not in a position to implement resource-intensive recommendations without support. These Funds should be made sustainable

⁸⁷⁹ Franciscans International, 'Universal Periodic Review Follow-Up Strategy: Practical Advocacy Initiatives,' available at: www.upr-info.org/IMG/pdf/UPR_Follow-up_Strategy.pdf

⁸⁸⁰ *Ibid.*

via ongoing contributions and supplementary funding should continue to be provided through other means, such as the Voluntary Fund for Technical Cooperation in the Field of Human Rights.⁸⁸¹

As the only non-governmental organisation devoted solely to Universal Periodic Review, UPR Info has developed a Mid-Term Implementation Assessment database to record levels of implementation within reviewed States to ensure ‘the fulfilment of the State’s human rights and commitments.’⁸⁸² Recommending States and relevant stakeholders could search the database to determine whether a State has implemented recommendations stemming from the previous review, thus streamlining the monitoring process. In consultation with States under review, the Human Rights Council should work with the Office of the High Commissioner for Human Rights to either adopt UPR Info’s mechanism of monitoring the implementation of accepted recommendations and voluntary commitments using measurable indicators or formalise an alternative method. Even when a State has taken no action towards implementing a given recommendation, States should be encouraged to provide a timeline for implementation and outline steps towards full implementation. Such a mechanism would simplify efforts to monitor and follow-up on State progress over time and, in turn, demonstrate the overall impact of the review process.

Bearing the primary responsibility over implementation of accepted recommendations and voluntary commitments, reviewed States should be encouraged to table the outcome of the review in Parliament, produce national plans of action, submit mid-term implementation reports and provides concrete timelines for implementation of outstanding commitments. In order to assist recommending States and stakeholders in the follow-up process, the Human Rights Council should adopt a systematic method for monitoring implementation.

⁸⁸¹ Human Rights Council, ‘Report of the Chairperson of the Board of Trustees of the United Nations Voluntary Fund for Technical Cooperation in the Field of Human Rights,’ 1 June 2012, A/HRC/20/34.

⁸⁸² Human Rights Council, ‘Institution-building of the United Nations Human Rights Council,’ 18 June 2006, A/HRC/5/1, p. 3, para. 4(c).

4.8 Follow-up

States under review, recommending States and relevant stakeholders assume a key role in the follow-up process. States that have made recommendations to States under review should keep track of those recommendations and follow-up on the status of their implementation when the review is in mid-cycle and during the following interactive dialogue to hold States accountable. Recommending States can choose to partner with stakeholders that are experts in the field and actively monitor the outcome of the review to follow-up on implementation.

Whilst it is imperative that recommending States and stakeholders monitor and follow-up on accepted recommendations and voluntary commitments, it is likewise important to follow-up on rejected recommendations in future cycles of review. As political parties change over time, it is possible new delegations may accept recommendations that their predecessors reject. It is similarly possible that even if the delegation remains unchanged from one cycle to the next, their stance on certain issues could evolve over time and they may reconsider previously rejected recommendations.

Stakeholders have an important role in monitoring and following-up on the status of implementation of accepted recommendations and ensure rejected recommendations are raised during future cycles of review if the recommendation is in line with the criteria set out for the review process. In order to place pressure on States to follow through with implementation and consider accepting rejected recommendations in the future, stakeholders should work with the media to publicise these commitments and any action a given States has taken or failed to take in this regard, in order for the public to hold elected representatives accountable for their commitments. Review outcomes could be publicised through different types of media, including in print, online, through television, or on the radio, to reach the widest possible audience.⁸⁸³

Follow-up measures are essential to ensuring States under review fulfil obligations stemming from the outcome of the review by implementing accepted recommendations and voluntary commitments. States under review, recommending

⁸⁸³ Franciscans International, 'Universal Periodic Review Follow-Up Strategy: Practical Advocacy Initiatives,' available at: www.upr-info.org/IMG/pdf/UPR_Follow-up_Strategy.pdf

States and relevant stakeholders should work in tandem to adopt the above follow-up strategies with a view to ensuring reviewed States implement their commitments.

5. Moving Forward

Some reforms would benefit from clarifying the modalities of the review, whereas others depend on the level of involvement of the State under review, recommending State, Officer of the High Commissioner for Human Rights, national human rights institution and relevant stakeholders in the review process. Each of these entities assumes an integral role in collaborating with one another to identify ways to improve the review process to enhance the delivery of sustainable and tangible outcomes based on:

- a. an assessment undertaken in an objective and transparent manner of the human rights situation in the country under review, including positive developments and the challenges faced by the country;
- b. sharing of best practices;
- c. an emphasis on enhancing cooperation for the promotion and protection of human rights;
- d. the provision of technical assistance and capacity-building in consultation and with the consent of, the country concerned; and
- e. voluntary commitments and pledges made by the country under review.⁸⁸⁴

Universal Periodic Review is an important tool for holding States accountable for their human rights records through transparent, periodic reviews of the human rights record of all United Nations Member States. However, like any tool, its efficacy depends on how it is used. It is imperative to evaluate the Universal Periodic Review process itself to ensure it functions in a way that is congruent with its intended outcomes. Based on an evaluation of the work and functions of Universal Periodic Review measured against its principles, objectives and outcomes, it is clear that Universal Periodic Review is an imperfect mechanism. By addressing challenges and integrating best practices into the modalities for the review, the process can be strengthened in future cycles and thus have a greater impact on the human rights situation at the ground level.

⁸⁸⁴ Human Rights Council, 'Institution-building of the United Nations Human Rights Council,' 18 June 2006, A/HRC/5/1, p. 5, para. 27.

Appendix A: States under Review during 1st Cycle

	1 st session (2008)	2 nd session (2008)	3 rd session (2008)	4 th session (2009)	5 th session (2009)	6 th session (2009)	7 th session (2010)	8 th session (2010)	9 th session (2010)	10 th session (2011)	11 th session (2011)	12 th session (2011)
1	Morocco	Gabon	Botswana	Cameroon	Central African Republic	Cote d'Ivoire	Angola	Guinea	Liberia	Mozambique	Seychelles	Swaziland
2	South Africa	Ghana	Burkina Faso	Djibouti	Chad	Democratic Republic of the Congo	Egypt	Guinea-Bissau	Libyan Arab Jamahiriya	Namibia	Sierra Leone	Togo
3	Tunisia	Mali	Burundi	Mauritania	Comoros	Equatorial Guinea	Madagascar	Kenya	Malawi	Niger	Somalia	Uganda
4	Algeria	Zambia	Cape Verde	Nigeria	Congo	Eritrea	Gambia	Lesotho	Mauritania	Rwanda	Sudan	United Republic of Tanzania
5	Bahrain	Benin	Turkmenistan	Senegal	Vanuatu	Ethiopia	Qatar	Kiribati	Lebanon	Sao Tome and Principe	Palau	Zimbabwe
6	India	Japan	Tuvalu	Bangladesh	Viet Nam	Bhutan	Fiji	Kuwait	Maldives	Myanmar	Papua New Guinea	Syrian Arab Republic
7	Indonesia	Pakistan	United Arab Emirates	China	Yemen	Brunei Darussalam	Iran (Islamic Republic of)	Kyrgyzstan	Marshall Islands	Nauru	Samoa	Tajikistan
8	Philippines	Republic of Korea	Uzbekistan	Jordan	Afghanistan	Cambodia	Iraq	Lao People's Democratic Republic	Micronesia (Federated States of)	Nepal	Singapore	Thailand

	1st session (2008)	2nd session (2008)	3rd session (2008)	4th session (2009)	5th session (2009)	6th session (2009)	7th session (2010)	8th session (2010)	9th session (2010)	10th session (2011)	11th session (2011)	12th session (2011)
9	Argentina	Sri Lanka	Columbia	Malaysia	Uruguay	Cyprus	Kazakhstan	Grenada	Mongolia	Oman	Solomon Islands	Timor Leste
10	Ecuador	Tonga	Bahamas	Saudi Arabia	Belize	Democratic People's Republic of Korea	Bolivia	Guyana	Honduras	Paraguay	Saint Vincent and the Grenadines	Trinidad and Tobago
11	Brazil	Guatemala	Barbados	Cuba	Chile	Costa Rica	Nicaragua	Haiti	Jamaica	Saint Kitts and Nevis	Suriname	Venezuela (Bolivian Republic of)
12	Netherlands	Peru	Israel	Mexico	Malta	Dominica	El Salvador	Spain	Panama	Saint Lucia	Belgium	Antigua and Barbuda
13	Finland	France	Liechtenstein	Canada	Monaco	Dominican Republic	Italy	Sweden	United States of America	Australia	Denmark	Iceland
14	United Kingdom	Switzerland	Luxembourg	Germany	New Zealand	Norway	San Marino	Turkey	Andorra	Austria	Greece	Ireland
15	Poland	Romania	Montenegro	Russian Federation	Slovakia	Portugal	Slovenia	Armenia	Bulgaria	Estonia	Hungary	Lithuania
16	Czech Republic	Ukraine	Serbia	Azerbaijan	The Former Yugoslav Republic of Macedonia	Albania	Bosnia and Herzegovina	Belarus	Croatia	Georgia	Latvia	Moldova

Appendix B: States under Review during 2nd Cycle

	13th session (2012)	14th session (2012)	15th session (2013)	16th session (2013)	17th session (2013)	18th session (2014)	19th session (2014)	20th session (2014)	21st session (2015)	22nd session (2015)	23rd session (2015)	24th session (2016)	25th session (2016)	26th session (2016)
1	Bahrain	Czech Republic	France	Turkmenistan	Saudi Arabia	New Zealand	Norway	Italy	Kyrgyzstan	Belarus	Micronesia	Namibia	Suriname	Togo
2	Ecuador	Argentina	Tonga	Burkina Faso	Senegal	Afghanistan	Albania	El Salvador	Kiribati	Liberia	Lebanon	Niger	Greece	Syrian Arab Republic
3	Tunisia	Gabon	Romania	Cape Verde	China	Chile	Democratic Republic of the Congo	Gambia	Guinea	Malawi	Mauritania	Mozambique	Samoa	Venezuela (Bolivarian Republic of)
4	Morocco	Ghana	Mali	Colombia	Nigeria	Viet Nam	Côte d'Ivoire	Bolivia	Lao People's Democratic Republic	Mongolia	Nauru	Estonia	Saint Vincent and the Grenadines	Iceland
5	Indonesia	Peru	Botswana	Uzbekistan	Mexico	Uruguay	Portugal	Fiji	Spain	Panama	Rwanda	Paraguay	Sudan	Zimbabwe
6	Finland	Guatemala	Bahamas	Tuvalu	Mauritius	Yemen	Bhutan	San Marino	Lesotho	Maldives	Nepal	Belgium	Hungary	Lithuania
7	United Kingdom	Benin	Burundi	Germany	Jordan	Vanuatu	Dominica	Kazakhstan	Kenya	Andorra	Saint Lucia	Denmark	Papua New Guinea	Uganda

	13th session (2012)	14th session (2012)	15th session (2013)	16th session (2013)	17th session (2013)	18th session (2014)	19th session (2014)	20th session (2014)	21st session (2015)	22nd session (2015)	23rd session (2015)	24th session (2016)	25th session (2016)	26th session (2016)
8	India	Republic of Korea	Luxembourg	Djibouti	Malaysia	The Former Yugoslav Republic of Macedonia	Democratic People's Republic of Korea	Angola	Armenia	Bulgaria	Oman	Palau	Tajikistan	Timor Leste
9	Brazil	Switzerland	Barbados	Canada	Central African Republic	Comoros	Brunei Darussalam	Iran (Islamic Republic of)	Guinea-Bissau	Honduras	Austria	Somalia	United Republic of Tanzania	Republic of Moldova
10	Philippines	Pakistan	Montenegro	Bangladesh	Monaco	Slovakia	Costa Rica	Madagascar	Sweden	United States of America	Myanmar	Seychelles	Antigua and Barbuda	Haiti
11	Algeria	Zambia	United Arab Emirates	Russian Federation	Belize	Eritrea	Equatorial Guinea	Iraq	Grenada	Marshall Islands	Australia	Solomon Islands	Swaziland	South Sudan
12	Poland	Japan	Israel	Azerbaijan	Chad	Cyprus	Ethiopia	Slovenia	Turkey	Croatia	Georgia	Latvia	Trinidad and Tobago	
13	Netherlands	Ukraine	Liechtenstein	Cameroon	Congo	Dominican Republic	Qatar	Egypt	Guyana	Jamaica	Saint Kitts and Nevis	Sierra Leone	Thailand	
14	South Africa	Sri Lanka	Serbia	Cuba	Malta	Cambodia	Nicaragua	Bosnia and Herzegovina	Kuwait	Libya	Sao Tome and Principe	Singapore	Ireland	

Appendix C

Issues Raised during Sessions 1-11 of 1st Cycle⁸⁸⁵

Rank	Issue	Total Recommendations	Percent of 18,888 Recommendations
1	International instruments	3714	19.66
2	Women's rights	3306	17.5
3	Rights of the Child	3053	16.16
4	Torture and other CID treatment	1500	7.94
5	Justice	1362	7.21
6	Human rights education and training	828	4.38
7	Detention conditions	798	4.22
8	Death penalty	796	4.21
9	Special procedures	787	4.17
10	Treaty bodies	765	4.05
11	Migrants	760	4.02
12	Minorities	758	4.01
13	Right to education	733	3.88
14	Technical assistance	706	3.74
15	NHRI	689	3.65
16	Disabilities	594	3.14
17	Racial discrimination	591	3.13
18	Economic, social and cultural rights	563	2.98
19	Trafficking	555	2.94
20	Freedom of opinion and expression	472	2.5
21	Freedom of the press	464	2.46
22	Other	437	2.31
23	Sexual orientation and gender identity	420	2.22
24	Right to health	416	2.2
25	Poverty	407	2.15
26	Labour	395	2.09

⁸⁸⁵ UPR Info, 'Statistics of UPR Recommendations,' 2012, available at: www.upr-info.org/database/statistics/

Rank	Issue	Total Recommendations	Percent of 18,888 Recommendations
27	Freedom of religion and belief	389	2.06
28	Civil society	383	2.03
29	Indigenous peoples	372	1.97
30	Civil and political rights	369	1.95
31	Asylum seekers - refugees	366	1.94
32	General	359	1.9
33	Enforced disappearances	357	1.89
34	Development	319	1.69
35	Human rights defenders	297	1.57
36	Human rights violations by State agents	286	1.51
37	Freedom of association and peaceful assembly	235	1.24
38	National plan of action	234	1.24
39	UPR Process	219	1.16
40	Impunity	193	1.02
41	HIV Aids	145	0.77
42	Elections	141	0.75
43	Extrajudicial executions	135	0.71
44	Right to food	123	0.65
45	Corruption	117	0.62
46	International humanitarian law	104	0.55
47	Public security	104	0.55
48	Internally displaced persons	102	0.54
49	Right to housing	92	0.49
50	Environment	85	0.45
51	Right to land	84	0.44
52	Counter-terrorism	83	0.44

Appendix D
Number of Recommendations Received Per State under Review
during Sessions 1-11 of 1st Cycle⁸⁸⁶

Rank	State under Review	Total Recommendations
1	United States	280
2	Iran	212
3	Sudan	204
4	Myanmar	197
5	Nepal	193
6	Iraq	179
7	Kyrgyzstan	175
8	Viet Nam	172
9	Egypt	171
10	Austria	170
11	Belarus	169
12	Mozambique	169
13	Georgia	169
14	DPR Korea	167
15	Turkey	167
16	Oman	166
17	Angola	166
18	Democratic Republic of Congo	166
19	Kenya	166
20	Armenia	165
21	Israel	164
22	Australia	162
23	Ethiopia	160
24	Kuwait	160
25	Mexico	159
26	Italy	157
27	Somalia	155
28	Belgium	155
29	Yemen	153
30	Gambia	153
31	Sweden	150
32	Bhutan	150
33	Mauritania	150
34	Hungary	149
35	Cuba	148
36	Afghanistan	147
37	Cote d'Ivoire	147
38	Lebanon	147

⁸⁸⁶ UPR Info, 'Statistics of UPR Recommendations,' 2012, available at: www.upr-info.org/database/statistics/

Rank	State under Review	Total Recommendations
39	Malaysia	147
40	Papua New Guinea	146
41	Jamaica	146
42	Samoa	145
43	Laos	143
44	Singapore	143
45	Brunei Darussalam	142
46	Eritrea	141
47	Greece	141
48	Uzbekistan	140
49	St Lucia	140
50	Maldives	140
51	Spain	140
52	China	138
53	Cambodia	138
54	Bulgaria	137
55	Lesotho	136
56	Denmark	135
57	Honduras	133
58	Mongolia	131
59	Croatia	131
60	Kazakhstan	129
61	Paraguay	129
62	Slovakia	129
63	Malawi	129
64	Sierra Leone	129
65	Estonia	127
66	Latvia	126
67	Bosnia & Herzegovina	126
68	Equatorial Guinea	126
69	Rwanda	135
70	Chad	123
71	Chile	122
72	Bolivia	122
73	Namibia	122
74	Russian Federation	121
75	Guyana	121
76	El Salvador	120
77	Libya	120
78	St Vincent & the Grenadines	119
79	Nicaragua	118
80	Central African Republic	118
81	Norway	118
82	Jordan	118
83	Fiji	116
84	Portugal	115

Rank	State under Review	Total Recommendations
85	Nigeria	115
86	Solomon Islands	115
87	Guinea	114
88	Liberia	114
89	Canada	114
90	Saudi Arabia	113
91	St Kitts & Nevis	113
92	Nauru	112
93	Qatar	112
94	Guinea Bissau	112
95	Colombia	112
96	Niger	112
97	Palau	110
98	Costa Rica	108
99	Slovenia	106
100	Albania	106
101	Burundi	104
102	Botswana	102
103	Pakistan	101
104	Dominican Republic	101
105	Bangladesh	100
106	Sao Tome & Principe	100
107	Senegal	98
108	Uruguay	98
109	Republic of Congo	98
110	Cameroon	97
111	Grenada	97
112	Panama	97
113	Suriname	95
114	Sri Lanka	95
115	Vanuatu	95
116	Mauritius	93
117	Madagascar	93
118	Macedonia FYR	91
119	Azerbaijan	91
120	Kiribati	90
121	Turkmenistan	87
122	Burkina Faso	86
123	Djibouti	80
124	Seychelles	80
125	Serbia	79
126	Dominica	78
127	Malta	77
128	Cyprus	76
129	Micronesia	74
130	United Arab Emirates	74
131	New Zealand	73

Rank	State under Review	Total Recommendations
132	Bahamas	73
133	Germany	72
134	Comoros	70
135	San Marino	67
136	Andorra	65
137	Barbados	64
138	Guatemala	62
139	Japan	62
140	Marshall Islands	57
141	Ghana	56
142	Montenegro	55
143	Romania	55
144	Belize	54
145	Netherlands	52
146	Tonga	51
147	Tuvalu	51
148	Cape Verde	50
149	Liechtenstein	48
150	Republic of Korea	47
151	Switzerland	47
152	Luxembourg	47
153	Monaco	46
154	Mali	46
155	Ukraine	44
156	Gabon	41
157	Argentina	39
158	Peru	38
159	Zambia	37
160	Czech Republic	36
161	Algeria	36
162	France	36
163	Benin	35
164	United Kingdom	35
165	Poland	33
166	India	30
167	South Africa	29
168	Tunisia	28
169	Philippines	24
170	Finland	17
171	Morocco	16
172	Brazil	15
173	Indonesia	13
174	Bahrain	12
175	Ecuador	12

Appendix E

Number of Recommendations Issued Per State under Review during Sessions 1-11 of 1st Cycle⁸⁸⁷

Rank	Recommending State	Total Recommendations
1	Canada	816
2	Norway	636
3	France	621
4	Mexico	603
5	Brazil	603
6	Spain	586
7	United Kingdom	585
8	Algeria	571
9	Netherlands	512
10	Slovenia	483
11	Czech Republic	452
12	Argentina	435
13	Austria	407
14	United States	394
15	Chile	366
16	Italy	365
17	Switzerland	361
18	Germany	347
19	Sweden	334
20	Azerbaijan	325
21	Slovakia	317
22	Malaysia	304
23	Egypt	286
24	Australia	267
25	Hungary	242
26	Cuba	239
27	Iran	231
28	Morocco	222

⁸⁸⁷ UPR Info, 'Statistics of UPR Recommendations,' 2012, available at: www.upr-info.org/database/statistics/

Rank	Recommending State	Total Recommendations
29	Bangladesh	212
30	Belgium	203
31	Ecuador	192
32	Pakistan	189
33	Ireland	188
34	New Zealand	184
35	Turkey	182
36	Poland	170
37	Philippines	167
38	Indonesia	155
39	Denmark	154
40	Russian Federation	150
41	Portugal	148
42	Finland	145
43	Uruguay	141
44	Belarus	141
45	South Africa	137
46	Japan	132
47	Republic of Korea	120
48	Ghana	119
49	Jordan	117
50	Maldives	117
51	Thailand	112
52	Israel	111
53	Nigeria	103
54	Sudan	96
55	Bolivia	94
56	Palestine	90
57	Libya	86
58	Holy See	80
59	China	74
60	Nicaragua	73
61	Latvia	72
62	Saudi Arabia	72
63	Greece	71

Rank	Recommending State	Total Recommendations
64	Costa Rica	69
65	Qatar	69
66	Venezuela	69
67	Ukraine	68
68	Viet Nam	67
69	Djibouti	66
70	Luxembourg	66
71	Angola	62
72	Kuwait	62
73	Kyrgyzstan	58
74	Syria	54
75	Moldova	52
76	Zimbabwe	47
77	Democratic People's Republic of Korea	47
78	Laos	46
79	Bosnia & Herzegovina	46
80	Kazakhstan	43
81	Uzbekistan	43
82	Columbia	42
83	Sri Lanka	41
84	Lebanon	41
85	Bhutan	40
86	Senegal	39
87	Mauritius	38
88	India	37
89	Democratic Republic of Congo	36
90	Bahrain	36
91	Peru	35
92	Chad	35
93	Trinidad & Tobago	34
94	Burkina Faso	34
95	Guatemala	34
96	Singapore	33
97	Yemen	33

Rank	Recommending State	Total Recommendations
98	Lithuania	33
99	Niger	32
100	Haiti	31
101	Cote d'Ivoire	31
102	Armenia	31
103	Botswana	30
104	United Arab Emirates	29
105	Oman	29
106	Tunisia	28
107	Iraq	27
108	Afghanistan	26
109	Honduras	25
110	Republic of Congo	23
111	Nepal	21
112	Tajikistan	21
113	Cyprus	21
114	Romania	19
115	Albania	18
116	Serbia	16
117	Bulgaria	15
118	Panama	14
119	Cambodia	14
120	Myanmar	12
121	Uganda	12
122	Croatia	12
123	Gabon	11
124	Timor Leste	11
125	Mauritania	11
126	Benin	10
127	Paraguay	9
128	Dominican Republic	9
129	Unknown ⁸⁸⁸	9
130	Jamaica	9

⁸⁸⁸ These recommendations were made during the review of Indonesia. Human Rights Council, 'Report of the Working Group on the Universal Periodic Review: Indonesia,' 14 May 2008, A/HRC/8/23.

Rank	Recommending State	Total Recommendations
131	Cameroon	8
132	Liechtenstein	8
133	Estonia	8
134	Somalia	8
135	Tanzania	7
136	Ethiopia	7
137	Macedonia Former Yugoslav Republic	6
138	Burundi	6
139	Georgia	6
140	Zambia	5
141	Brunei Darussalam	5
142	Lesotho	4
143	Samoa	4
144	Mozambique	3
145	Namibia	3
146	Mali	3
147	Barbados	3
148	Madagascar	3
149	Rwanda	2
150	Equatorial Guinea	2
151	Central African Republic	2
152	Cape Verde	2
153	Malta	1
154	Monaco	1
155	El Salvador	1
156	Swaziland	1
157	Iceland	1

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